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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AXONIC CAPITAL LLC; AXONIC CAPITAL GP
LLC; AXONIC CREDIT OPPORTUNITIES
MASTER FUND, LP; GIC PRIVATE LIMITED;
GOOD HILL CAPITAL LLC; GOOD HILL MASTER
FUND L.P.; GOOD HILL PARTNERS LP; OC 523
MASTER FUND, LTD.; RIMROCK CAPITAL
MANAGEMENT, LLC; and RIMROCK
STRUCTURED PRODUCT (MASTER) FUND,
LTD.,

Plaintiffs,

v.

GATEWAY ONE LENDING & FINANCE, LLC; TCF
NATIONAL BANK; TCF AUTO RECEIVABLES,
LLC; TCF AUTO RECEIVABLES OWNER TRUST
2014-1; TCF AUTO RECEIVABLES OWNER TRUST
2015-1; TCF AUTO RECEIVABLES OWNER TRUST
2015-DP1; TCF AUTO RECEIVABLES OWNER
TRUST 2015-2; TCF AUTO RECEIVABLES OWNER
TRUST 2016-DP1; and TCF AUTO RECEIVABLES
OWNER TRUST 2016-1,

Defendants.

CIVIL ACTION NO:

COMPLAINT

JURY TRIAL DEMANDED

TABLE OF CONTENTS

INTRODUCTION	1
NATURE OF THE ACTION	2
JURISDICTION AND VENUE	12
I. PARTIES	13
A. Plaintiffs	13
B. Defendants	19
1. Gateway	19
2. TCF Auto	21
3. TCF Bank	22
4. The TCF Issuing Trusts	23
C. Non-Parties	25
1. TCF Financial	25
2. The TCF Securitizations’ Trustees	26
3. The TCF Securitizations’ Initial Purchasers	28
II. THE TCF SECURITIZATIONS, THE CERTIFICATES, THE OFFERING DOCUMENTS, AND THE SUPPLEMENTAL DATA	29
A. The TCF Securitizations	29
B. The Certificates	38
C. The Offering Documents	42
D. The Supplemental Data	52
III. REPORTED CNL IS MATERIAL TO CERTIFICATE INVESTORS	54

1	A.	CNL is a Necessary, Fundamental and Crucial Data Point in ABS	
2		Evaluation, Valuation and Pricing	56
3	B.	For the Above Reasons, CNL Data is Typically Reported by ABS	
4		Securitization Sponsors in Securitization Offering Documents, and	
5		Provided as Supplemental Data to Prospective Investors	64
6	C.	The Offering Documents Repeatedly Warned that Losses from the	
7		Underlying Receivables Could Materially Diminish Certificate	
8		Returns and/or Cause Certificate Investors' Material Losses	67
9	D.	ABS Structure Makes Certificate Returns Extremely Sensitive to	
10		Underlying Receivables' CNL	68
11	E.	ABS Industry Standards Call for Repo/Remarketing Expenses,	
12		When Passed on to ABS Securitizations and their Investors, to be	
13		Included in Reported CNL, Where They Form a Material Portion of	
14		Total CNL.....	71
15	1.	Where Repo/Remarketing Expenses are Passed on to ABS	
16		Securitizations and ABS Investors, They Are Typically	
17		Included in Reported CNL.....	71
18	2.	Where Repo/Remarketing Expenses are Passed on to ABS	
19		Securitizations and ABS Investors, such Expenses Typically	
20		Constitute a Material Portion of Reported CNL.....	76
21	IV.	DEFENDANTS' MATERIAL MISREPRESENTATIONS, MISLEADING	
22		STATEMENTS AND OMISSIONS	77
23	A.	Defendants' Omission to Disclose that Although Defendants Passed	
24		on Repo/Remarketing Expenses to their ABS	
25		Securitizations/Investors, Defendants' Reported CNL Excluded	
26		Repo/Remarketing Expenses, Rendered such Reported CNL False	
27		and/or Misleading.....	77
28	1.	Omissions from the Offering Documents.....	77
	2.	Omissions in Direct Communications with Plaintiffs	83
	B.	The Offering Documents Misrepresented that Repo/Remarketing	

1	Expenses Were Included in Reported CNL	84
2	C. The Offering Documents' Materially Misleading Sensitivity Analyses	
3	88
4	D. The Offering Documents' Misrepresentations and Omissions	
5	Concerning Gateway's Compensation from TCF Securitizations	94
6	E. Defendants' Affirmative Misrepresentations, in Direct	
7	Communications with Plaintiffs, Concerning Reported CNL	101
8	V. ADDITIONAL FACTS RELEVANT TO MATERIALITY: MOODY'S	
9	REACTIONS TO DEFENDANTS' CONDUCT FURTHER	
10	DEMONSTRATES MATERIALITY	105
11	A. Moody's Prompted Defendants to Provide the Requisite Disclosure	
12	in Pending/Future Auto Loan ABS Securitizations	105
13	B. Moody's Required Defendants to Restructure their Pending Auto	
14	Loan ABS Securitization, TCF 2016-PT1, with Materially Increased	
15	Credit Protection to Absorb the Previously-Omitted	
16	Repo/Remarketing Expenses.....	107
17	C. Moody's Downgraded Certain TCF 2016-1 Notes after Calculating	
18	the Increased CNL when Repo/Remarketing Expenses were Included	
19	108
20	D. Moody's Initiated an Industry-Wide Study of Auto Loan ABS	
21	Sponsors' Treatment of Repo/Remarketing Expenses and CNL	
22	Reporting, and Found Gateway in Violation of Industry Standards	110
23	VI. FACTS RELEVANT TO SCIENTER	112
24	VII. PLAINTIFFS' DUE DILIGENCE	118
25	A. Plaintiffs' Extensive Pre-Purchase Evaluation of the Certificates...	118
26	B. Plaintiffs' Additional Due Diligence	119
27	VIII. PLAINTIFFS' REASONABLE AND DIRECT RELIANCE ON	
28	DEFENDANTS' REPRESENTATIONS	121
	IX. PLAINTIFFS ARE ENTITLED TO A PRESUMPTION OF RELIANCE	

1	WITH RESPECT TO DEFENDANTS' MATERIAL OMISSIONS	128
2	X. LOSS CAUSATION/ECONOMIC LOSS	129
3	XI. DEFENDANTS' ACTIONS CONSTITUTE A SERVICER	
4	TERMINATION EVENT	131
5	FIRST CLAIM FOR RELIEF For Violations of Section 10(b) of the Exchange Act	
6	and Rule 10b-5 (Against All Defendants)	133
7	SECOND CLAIM FOR RELIEF For Common Law Fraud under California Law	
8	(Against All Defendants)	135
9	THIRD CLAIM FOR RELIEF For Aiding and Abetting Common Law Fraud	
10	under California Law (Against All Defendants)	137
11	FOURTH CLAIM FOR RELIEF For a Declaratory Judgment under the	
12	Declaratory Judgment Act, 28 U.S.C. § 2201 (Against Gateway)	138
13	DEMAND FOR JURY TRIAL	139
14		
15		
16		
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GLOSSARY / DEFINED TERMS

Term	Definition
ABS	asset-backed security
AC Fund	Axonic Credit Opportunities Master Fund, LP
Axonic	AC Fund, OC Fund, Axonic Capital, and Axonic Capital GP
Axonic Capital	Axonic Capital LLC
Axonic Capital GP	Axonic Capital GP LLC
California Republic	California Republic Bank
Certificates	the certificates issued in/through the TCF Securitizations, including the TCF 2014-1 Certificates, TCF 2015-1 Certificates, TCF 2015-DP1 Certificates, TCF 2015-2 Certificates, TCF 2016-DP1 Certificates, and TCF 2016-1 Certificates
CEO	Chief Executive Officer
Citigroup	Citigroup Global Markets Inc.
CNL	cumulative net losses
Credit Suisse	Credit Suisse Securities (USA) LLC
Defendants	Gateway, TCF Bank, TCF Auto, and the TCF Issuing Trusts
Experienced CNL	cumulative net losses for Gateway loan pools with Repo/Remarketing Expenses included, as passed on to and experienced by investors in Gateway-sponsored ABS

1	Fifth Third	Fifth Third Bank
2		
3	Gateway	Gateway One Lending & Finance, LLC --
4		sponsor of the TCF Securitizations, and
5		originator and servicer of the Underlying
6		Receivables
7	Gateway 2014 OM	July 9, 2014 offering memorandum for
8		Gateway-sponsored auto loan ABS shelf
9	Gateway May 2015 OM	May 28, 2015 offering memorandum for
10		Gateway-sponsored auto loan ABS shelf
11	Gateway November	November 9, 2015 offering memorandum
12	2015 OM	for Gateway-sponsored auto loan ABS
13		shelf
14	Gateway 2016 OM	September 7, 2016 offering memorandum
15		for Gateway-sponsored auto loan ABS
16		shelf
17	GHP	Good Hill Partners LP
18		
19	GIC	GIC Private Limited
20	Good Hill	GHP, Good Hill Capital, and Good Hill
21		Fund
22	Good Hill Capital	Good Hill Capital LLC
23		
24	Good Hill Fund	Good Hill Master Fund L.P. and certain
25		predecessor private investment funds
26		whose assets have been combined with
27		Good Hill Master Fund L.P.
28	Initial Purchasers	Credit Suisse, Wells Fargo, Citigroup, and
		Morgan Stanley
	Moody's	Moody's Investors Service

Moody's Announcement	Moody's December 14, 2016 publication announcing that it had recently learned that Gateway did not include Repo/Remarketing Expenses in reported CNL (Anna Burns and JingJing Dang, <i>Moody's Downgrades Auto Loan ABS Issued by TCF in 2016</i> , Moody's Investors Service, Dec. 14, 2016)
Moody's Methodology	Moody's Investors Service published methodology for evaluating and rating auto loan ABS, as set forth in Yan Yan, Matias Langer and William Black, <i>Moody's Approach to Rating Auto Loan- and Lease-Backed ABS</i> , Moody's Investors Service, Oct. 6, 2016
Moody's Study	Anna Burns and Yan Yan, <i>Auto ABS – US: Issuers' Calculations of Cumulative Net Loss May Vary</i> , Moody's Investor's Service, May 10, 2017
Morgan Stanley Notes	Morgan Stanley & Co. LLC the notes issued in/through the TCF Securitizations
Notes Offering Documents	the documents through which the Notes were issued, offered, marketed, and sold, including the TCF 2014-1 Notes Offering Documents, TCF 2015-1 Notes Offering Documents, TCF 2015-2 Notes Offering Documents, and TCF 2016-1 Notes Offering Documents
OC Fund	OC 523 Master Fund, Ltd.
Offering Documents	the TCF Certificate PPMs and the Notes Offering Documents

1	Plaintiffs	GIC, Good Hill, Axonic, and Rimrock
2	Repo/Remarketing	the expenses incurred by an auto loan
3	Expenses	servicer to repossess and liquidate the
4		collateral (<i>i.e.</i> , the autos) for defaulted
5		auto loans
6	Reported CNL	CNL for Gateway loan pools, as reported
7		by Defendants, with Repo/Remarketing
8		Expenses not included
9	Rimrock	Rimrock Capital and Rimrock Fund
10	Rimrock Capital	Rimrock Capital Management, LLC
11		
12	Rimrock Fund	Rimrock Structured Product (Master)
13		Fund, Ltd.
14	S&P Methodology	Standard & Poor's Global Ratings
15		published methodology for evaluating and
16		rating auto loan ABS, as set forth in S&P
17		Global Ratings, <i>ABS: General</i>
18		<i>Methodology and Assumptions for Rating</i>
19		<i>U.S. Auto Loan Securitizations</i> , S&P
20		Global Ratings, Jan. 11, 2011 (as updated
21		in 2016 and 2017)
22	SEC	U.S. Securities and Exchange Commission
23	SPV	special purpose vehicle
24	Supplemental Data	statistical data authored and assembled by
25		Gateway, and provided to the Initial
26		Purchasers for distribution to prospective
27		Certificate investors, concerning (1) the
28		credit characteristics of the Underlying
		Receivables, and (2) the credit
		characteristics and performance of auto
		loan pools previously originated by
		Gateway

TCF 2014-1 Certificates	certificates issued in connection with the TCF 2014-1 securitization
TCF 2014-1 Certificate PPM	private placement memorandum, dated July 9, 2014, for TCF 2014-1 Certificates
TCF 2014-1 Notes OM	final offering memorandum supplement, dated July 16, 2014, for TCF 2014-1 Notes
TCF 2014-1 Notes Preliminary OM	preliminary offering memorandum supplement, dated July 9, 2014, for TCF 2014-1 Notes
TCF 2015-1 Certificates	certificates issued in connection with the TCF 2015-1 securitization
TCF 2015-1 Certificate PPM	private placement memorandum, dated May 28, 2015, for TCF 2015-1 Certificates
TCF 2015-1 Notes OM	final offering memorandum supplement, dated June 3 2015 for TCF 2015-1 Notes
TCF 2015-1 Notes Preliminary OM	preliminary offering memorandum supplement, dated May 28, 2015, for TCF 2015-1 Notes
TCF 2015-2 Certificates	certificates issued in connection with the TCF 2015-2 securitization
TCF 2015-2 Certificate PPM	private placement memorandum, dated November 10, 2015, for TCF 2015-2 Certificates
TCF 2015-2 Notes OM	final offering memorandum supplement, dated November 18, 2015 for TCF 2015-2 Notes

1	TCF 2015-2 Notes	preliminary offering memorandum
2	Preliminary OM	supplement, dated November 9, 2015, for
3		TCF 2015-2 Notes
4	TCF 2015-DP1	certificates issued in connection with the
5	Certificates	TCF 2015-DP1 securitization
6	TCF 2015-DP1	offering memorandum dated September
7	Certificate PPM	28, 2015 for TCF 2015-DP1 Certificates
8	TCF 2016-1 Certificates	certificates issued in connection with the
9		TCF 2016-1 securitization
10	TCF 2016-1 Certificate	private placement memorandum, dated
11	PPM	September 8, 2016, for TCF 2015-2
12		Certificates
13	TCF 2016-1 Notes OM	final offering memorandum supplement,
14		dated September 14, 2016, for TCF 2016-
15		1 Notes
16	TCF 2016-1 Notes	preliminary offering memorandum
17	Preliminary OM	supplement, dated September 7, 2016, for
18		TCF 2016-1 Notes
19	TCF 2016-DP1	Certificates issued in connection with the
20	Certificates	TCF 2016-DP1 securitization
21	TCF 2016-DP1	offering memorandum dated June 27,
22	Certificate PPM	2016 for TCF 2016-DP1 Certificates
23	TCF Bank	TCF National Bank (of which Gateway is
24		a wholly-owned subsidiary) --
25		administrator of the TCF Securitizations
26	TCF Certificate PPMs	the private placement memorandums
27		through which the Certificates were
28		issued, offered, marketed and sold,
		including the TCF 2014-1 Certificate
		PPM, TCF 2015-1 Certificate PPM, TCF

1		2015-DP1 Certificate PPM, TCF 2015-2
2		Certificate PPM, TCF 2016-DP1
3		Certificate PPM and the TCF 2016-1
4		Certificate PPM
5	TCF 2014-1 Notes	the TCF 2014-1 Notes Preliminary OM,
6	Offering Documents	the TCF 2014-1 Notes OM, the Gateway
7		2014 OM
8	TCF 2015-1 Notes	the TCF 2015-1 Notes Preliminary OM,
9	Offering Documents	the TCF 2015-1 Notes OM, and the
10		Gateway May 2015 OM
11	TCF 2015-2 Notes	the TCF 2015-2 Notes Preliminary OM,
12	Offering Documents	the TCF 2015-2 Notes OM, and the
13		Gateway November 2015 OM
14	TCF 2016-1 Notes	the TCF 2016-1 Notes Preliminary OM,
15	Offering Documents	the TCF 2016-1 Notes OM, and the
16		Gateway 2016 OM
17	TCF Auto	TCF Auto Receivables, LLC (a wholly-
18		owned subsidiary of Gateway) -- depositor
19		for the TCF Securitizations
20	TCF Financial	TCF Financial Corporation (of which
21		Gateway and all TCF entities are wholly-
22		owned subsidiaries)
23	TCF Issuing Trusts	TCF Auto Receivables Owner Trust 2014-
24		1; TCF Auto Receivables Owner Trust
25		2015-1; TCF Auto Receivables Owner
26		Trust 2015-DP1, TCF Auto Receivables
27		Owner Trust 2015-2; TCF Auto
28		Receivables Owner Trust 2016-DP1 and
		TCF Auto Receivables Owner Trust 2016-
		1, each of which are direct or indirect
		subsidiaries of Gateway

TCF Securitizations	TCF 2014-1, TCF 2015-1, TCF 2015-DP1, TCF 2015-2, TCF 2016-DP1, and TCF 2016-1
Transaction Parties	Gateway (sponsor, custodian, originator and servicer); TCF Bank (administrator); TCF Auto (depositor); TCF Issuing Trusts (SPV issuers); US Bank (indenture trustee); Wilmington (owner trustee); Initial Purchasers
Underlying Receivables	the pooled auto loans originated by Gateway and transferred from Gateway to the TCF Issuing Trusts, collateralizing or otherwise backing the Notes and Certificates
US Bank	U.S. Bank National Association -- indenture trustee for the TCF Securitizations
Wells Fargo	Wells Fargo Securities, LLC
Wilmington	Wilmington Trust National Association -- owner trustee for the TCF Securitizations

1 Plaintiffs Axonic, GIC, Good Hill and Rimrock, by their undersigned
2 counsel, bring this action for violations of the federal securities laws and the
3 common law of the state of California on their own behalf against Defendants
4 Gateway, TCF Bank, TCF Auto and the TCF Issuing Trusts. The allegations in this
5 Complaint are based on Plaintiffs' knowledge as to themselves, and on information
6 and belief, including the investigation of counsel, as to all other matters. The
7 investigation of counsel is predicated upon, among other things, review and analysis
8 of the TCF Securitization Offering Documents, the Supplemental Data, and press
9 releases, media reports and analyst reports concerning the TCF Securitizations
10 and/or Defendants and their affiliates. Plaintiffs believe that substantial, additional
11 evidentiary support for the allegations set forth herein will be obtained after a
12 reasonable opportunity for discovery.

13 INTRODUCTION

14 1. As detailed herein, Plaintiffs invested in excess of \$90 million,
15 purchasing Certificates in auto-loan ABS securitizations sponsored and structured
16 by Defendants and backed by auto loans originated and serviced by Defendants. In
17 connection with those securitizations, Defendants materially misrepresented **the**
18 **single most important data point used by Certificate investors to evaluate,**
19 **value, and price the Certificates:** the level of cumulative net losses ("CNL")
20 associated with Defendants' auto loans. CNL is particularly important to Certificate

1 investors because ABS securitization structure locks loan CNL and Certificate
2 returns in a zero-sum game: every dollar by which CNL increases reduces
3 Certificate returns by the same dollar. Certificate returns, and hence Certificate
4 valuation and pricing, are therefore acutely sensitive to CNL. **Plaintiffs relied**
5 **directly on Defendants' Reported CNL** in evaluating the Certificates, determining
6 to invest in them and paying the prices they did for them, and were materially
7 damaged thereby.

11 NATURE OF THE ACTION

12 2. Defendants originate and service auto loans, and create and sponsor, as
13 detailed herein, ABS collateralized by pools of such auto loans.

14 3. Plaintiffs are purchasers of certain securities (the Certificates) issued
15 in certain ABS sponsored by Defendants (the TCF Securitizations) backed by pools
16 of Gateway-originated auto loans (the Underlying Receivables).

17 4. This action arises out of Defendants' fraudulent conduct in connection
18 with the TCF Securitizations and with the offer and sale to Plaintiffs of the
19 Certificates. Plaintiffs allege that:

20 a. in the offering documents for the Certificates (the Offering
21 Documents), as well as in further information that Defendant provided to Plaintiffs
22 (the Supplemental Data) and in Defendants' direct communications with Plaintiffs,
23

1 Defendants made material misrepresentations, misleading statements and omissions
2 concerning the CNL experienced by Gateway's auto loans (the Reported CNL);
3

4 b. Plaintiffs, in reliance on Defendants' material
5 misrepresentations, misleading statements, and omissions concerning Reported
6 CNL, decided:
7

8 i. to invest in the Certificates; and
9
10 ii. to do so at prices determined on the basis of those material
11 misrepresentations, misleading statements, and omissions; and
12

13 c. consequently, Plaintiffs, as a result of Defendants' material
14 misrepresentations, misleading statements, and omissions, suffered substantial
15 damages.
16

17 5. Although ABS are reasonably complex (albeit highly rational), the
18 particular matters at issue here, which center on Reported CNL versus Experienced
19 CNL, are straightforward and readily comprehensible.
20

21 6. In ABS securitizations (here, the TCF Securitizations) the securities
22 issued (here, the Certificates and several classes of senior/subordinated Notes) are
23 collateralized by the pooled underlying assets (here, the Underlying Receivables).
24 The cashflows generated by the Underlying Receivables (specifically, the payments
25 of interest and repayments of principal on the pooled auto loans, as well as, for
26
27
28

1 defaulted loans, recoveries of principal achieved via repossession and liquidation of
2 the vehicles securing the loans) serve as the basis for:

3
4 a. payment obligations to Noteholders (*i.e.*, scheduled interest and
5 repayment of outstanding principal with respect to the Notes);

6
7 b. payment obligations to Transaction Parties (*i.e.*, fees/expenses
8 of ABS securitization service providers, such as the servicer for the underlying loans
9 and the securitization trustee(s)); and

10
11 c. all further “residual” cashflows, if any, after the above-identified
12 and more senior payment obligations to Noteholders and Transaction Parties have
13 been satisfied, which such residual cashflows accrue to the Certificates and
14 Certificate investors and form the basis of the Certificates’ returns.

15
16
17 7. Structuring details aside, what is essential is that the returns and risks
18 of the ABS securities (here, the Notes and Certificates) are thus based on, and a
19 direct function of, the performance of their underlying asset pool (here, the
20 Underlying Receivables). If the Underlying Receivables perform well, Noteholders
21 receive full payment of interest and principal, and Certificateholders receive
22 applicable returns. The worse the Underlying Receivables perform, the more
23 Certificate returns are diminished (or extinguished or turn negative), and the greater
24 the threat to Noteholders of failing to receive full payment of interest and/or
25
26
27
28

1 principal. The value and/or price of the Certificates (and Notes) thus directly depend
2 on the performance of the Underlying Receivables.
3

4 8. However, at the outset of an ABS securitization (such as TCF
5 Securitizations here), the pooled underlying loans are newly originated (as were the
6 Underlying Receivables here) and have no performance record. Consequently, ABS
7 investors such as Plaintiffs, in evaluating whether to invest in new-issue ABS
8 securities (such as the Certificates here) and at what price to do so, must evaluate
9 the *prospective* performance and cash flows of the Underlying Receivables.
10
11

12 9. ABS investors, including Plaintiffs, do so by:
13

14 a. considering and analyzing at least two different sets of data,
15 namely:
16

17 i. extensive data concerning the credit characteristics of the
18 Underlying Receivables (*i.e.*, characteristics of the pool's loans that describe and
19 effect how such loans will perform); and
20

21 ii. extensive data concerning the actual performance record
22 of *prior* loan pools previously originated by the same originator (and/or possessing
23 similar credit characteristics), accompanied by data concerning the credit
24 characteristics of such prior loan pools;
25
26

27 b. applying statistical techniques and financial modeling to develop
28 a "base case" view of how the Underlying Receivables will perform, based on (1)

1 the performance of the above-mentioned previously-originated loan pools, and (2)
2 the nature and extent of the similarities and differences between the credit
3 characteristics of such prior loan pools and those of the Underlying Receivables;
4

5 c. modeling “base case” Underlying Receivables cash flows as
6 they flow through the ABS securitization structure to the Notes, Transaction Parties,
7 and Certificates, and thereby model “base case” Certificate cashflows;
8

9 d. developing multiple “stress” scenario views of Underlying
10 Receivables performance, based on the historical record and/or current economic
11 trends, and modeling the resulting “stress” scenario cashflows through the ABS
12 securitization structure and to Certificateholders; and
13
14

15 e. if determining after such analyses to invest, formulating a price
16 to offer for the Certificates that allows for satisfactory returns even in such “stress”
17 scenarios.
18
19

20 10. Although each of the above-specified steps in ABS evaluation involves
21 sophisticated analysis of extensive data, the fact of central relevance here is simple:
22 a fundamental input in investor evaluation, valuation, and pricing of new-issue ABS
23 securities, such as the Certificates, is the reported performance for prior loan pools
24 originated by the same ABS sponsor and/or of similar credit quality. **More**
25 **specifically, the central historical loan pool performance metric considered by**
26 **and reported to ABS investors, such as Plaintiffs, in connection with new-issue**
27
28

1 **ABS evaluation was loan pool CNL, expressed as a percentage of a loan pool's**
2 **initial balance (*e.g.*, 2.5%). ABS investors, such as Plaintiffs, utilize CNL data**
3 **reported for *prior* loan pools as a key input in determining prospective “base**
4 **case” CNL for a new loan pool backing new-issue ABS securities.**

5
6
7 11. Certificate valuation and pricing is particularly and uniquely sensitive
8 to CNL, because ABS structure makes certificate claims to the pooled cashflows of
9 the underlying assets subordinate to the claims of noteholders and transaction
10 parties. As a result, every dollar increase in underlying assets' CNL is in the first
11 instance a dollar decrease to certificate returns, and in effect, comes out of certificate
12 investors' pockets.
13
14

15
16 12. CNL is generated when pooled loans default. Following default, to
17 obtain recovery of loan principal still outstanding, the loan servicer typically (1)
18 repossesses the vehicle securing the loan, and (2) sells (liquidates) the vehicle, with
19 proceeds from liquidation applied to the extent necessary or possible as recovery of
20 defaulted loan principal.
21
22

23 13. However, and approaching the crux of the misconduct alleged here, in
24 repossessing and liquidating vehicles securing defaulted loans, the ABS
25 sponsor/loan servicer incurs certain additional costs (Repo/Remarketing Expenses).
26 ABS sponsors treat their ABS securitization Repo/Remarketing Expenses in two
27 different ways:
28

1 a. most auto loan ABS sponsors (*i.e.*, 22 of the 28 auto loan ABS
2 sponsors whose securities are regularly rated by Moody's) pass on
3 Repo/Remarketing Expenses associated with loans backing ABS securitizations to
4 the ABS securitizations (and thus to securitization investors, including in the first
5 instance certificate investors). In ABS sponsored by these sponsors, the CNL
6 experienced by ABS securitization investors is the result of: (1) principal
7 outstanding on defaulted loans, minus (2) gross liquidation recoveries, minus (3)
8 Repo/Remarketing Expenses. Put differently, before liquidation proceeds flow to
9 the ABS securitization and its investors, the servicer extracts reimbursement for its
10 Repo/Remarketing Expenses from such gross liquidation recoveries, leaving "net
11 recoveries" (*i.e.*, net of Repo/Remarketing Expenses) for ABS securitization
12 investors;
13

14 b. a smaller number of auto loan ABS sponsors whose securities
15 are regularly rated by Moody's (*i.e.*, 6 of 28) bear themselves the Repo/Remarketing
16 Expenses associated with loans backing ABS securitizations. In ABS sponsored by
17 such sponsors, the CNL experienced by ABS securitization investors is the result of
18 (1) principal outstanding on defaulted loans, minus (2) gross liquidation recoveries.
19

20 14. In sum, where ABS sponsors pass on Repo/Remarketing Expenses to
21 their ABS securitizations, the CNL experienced by investors in such ABS
22 (Experienced CNL) includes Repo/Remarketing Expenses, and where ABS
23
24
25
26
27
28

1 sponsors retain such expenses, the CNL experienced by investors in such ABS
2 excludes those expenses.
3

4 15. It is standard practice among auto loan ABS sponsors to provide
5 historical CNL (Reported CNL) *on the same basis* as the CNL experienced by their
6 ABS investors (Experienced CNL). With respect to Repo/Remarketing Expenses,
7 this means that:
8

9
10 a. where ABS sponsors pass on Repo/Remarketing Expenses to
11 ABS investors, and thus cause their ABS investors to bear Repo/Remarketing
12 Expenses, such sponsors provide Reported CNL for historical loan pools that
13 includes associated Repo/Remarketing Expenses (*i.e.*, 19 of the 28 auto loan ABS
14 sponsors whose securities are regularly rated by Moody's); and
15
16

17 b. where ABS sponsors retain Repo/Remarketing Expenses, and
18 thus leave their ABS investors untouched by these expenses, such sponsors provide
19 Reported CNL for historical loan pools that excludes Repo/Remarketing Expenses
20 (*i.e.*, 6 of 28 auto loan ABS sponsors whose securities are regularly rated by
21 Moody's).
22
23

24 16. Either way, Reported CNL is consistent with Experienced CNL. Such
25 consistency, for obvious reasons, is not merely logical, but, for ABS investors
26 generally and ABS certificate investors particularly, **necessary**. Because a
27 fundamental task in ABS investors' evaluation of new-issue ABS is to evaluate the
28

1 prospective CNL they will experience in connection with it, and because such
2 evaluation depends centrally on the ABS sponsors' Reported CNL for historical loan
3 pools, the Reported CNL's basis must match the one ABS investors will actually
4 experience in connection with their ABS investment (*i.e.*, Experienced CNL). If
5 Reported CNL is presented in a manner that diverges from how ABS securitization
6 investors will experience CNL, their evaluation, valuation and pricing of new-issue
7 ABS securities, dependent on such Reported CNL, will miss the mark. That is what
8 occurred here.

12
13 17. Defendants, violating auto loan ABS industry practice, passed on
14 Repo/Remarketing Expenses to the TCF Securitizations' investors (and in the first
15 instance, to Certificate investors), but, in the TCF Securitizations' Offering
16 Documents and Supplemental Data, provided Reported CNL for historical auto loan
17 pools that **excluded** Repo/Remarketing Expenses. The TCF Securitization Offering
18 Documents not only omitted to disclose the material fact that Reported CNL
19 **excluded** Repo/Remarketing Expenses, but contained affirmative and material
20 misrepresentations indicating that Reported CNL *included* such expenses.

24
25 18. Defendants' misrepresentations, misleading statements, and omissions
26 relating to Reported CNL were material. Repo/Remarketing Expenses constituted
27 approximately 15%-20% of total CNL, and their exclusion from Reported CNL
28 caused Reported CNL, as reported by Defendants, to be understated by 15-20%

1 (e.g., Reported CNL of 3.0% when Repo/Remarketing Expenses were excluded,
2 versus Reported CNL of 3.5% when Repo/Remarketing Expenses were included).
3
4 Such a difference (CNL of 3.5%, rather than 3.0%) is highly material to Certificate
5 investors, as the subordination and structural leverage of ABS securitization operate
6 to magnify the impact of such CNL differentials on Certificate returns and value. In
7 reliance upon the Reported CNL provided by Defendants, which excluded
8 Repo/Remarketing Expenses, Plaintiffs unknowingly materially over-valued the
9 prospective cashflows of the Underlying Receivables and the Certificates, which
10 Plaintiffs would experience on a basis that included Repo/Remarketing Expenses.
11 Put simply, the practical effect of Defendants' misconduct was to cause Plaintiffs to
12 materially over-price, and overpay for, the cashflows, as represented by the
13 Certificates, that they could actually expect to receive.
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19 19. In December 2016, subsequent to Plaintiffs' Certificate purchases, it
20 was revealed that Defendants' Reported CNL had excluded Repo/Remarketing
21 Expenses. In the ensuing fall-out, Defendants were required to revise offering
22 documents for a pending Gateway-sponsored ABS securitization to provide the
23 requisite disclosure that Reported CNL excluded Repo/Remarketing Expenses, and
24 to restructure the securitization at the last moment to provide additional credit
25 protection against the Repo/Remarketing Expenses. Moody's also undertook a
26 programmatic re-evaluation of the credit ratings it previously provided for all
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28

1 Gateway-sponsored auto loan ABS that incorporated the Repo/Remarketing
2 Expenses that Defendants had previously excluded. Subsequently, Defendants
3
4 ceased further auto loan ABS issuances, terminated Gateway's two senior-most
5 officers (Brian and David MacInnis, Gateway's cofounders and, respectively, Chief
6 Executive Officer and President), and decided to exit the indirect auto finance
7 business (apart from run-off servicing of previously-originated loans).
8

9 10 **JURISDICTION AND VENUE**

11 20. The claims asserted herein arise under Section 10(b) of the U.S.
12 Securities Exchange Act of 1934, as amended (the "Exchange Act") (15 U.S.C.
13 § 78j(b)), and Rule 10b-5 (17 C.F.R. § 240.10b-5), promulgated by the U.S.
14 Securities and Exchange Commission (the "SEC"), the Declaratory Judgment
15 Act (28 U.S.C. § 2201), and the common law of the State of California. This Court
16 has jurisdiction pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa)
17 and 28 U.S.C. §§ 1331, 1337, and 1367.
18

19
20
21 21. Venue is proper in this District pursuant to Section 27 of the
22 Exchange Act, and 28 U.S.C. § 1391(b), and because many of the acts and events
23 alleged herein took place within this District.
24

25
26 22. In connection with the acts, conduct, and other wrongs complained of
27 herein, Defendants, directly or indirectly, used the means and instrumentalities of
28 interstate commerce, the United States mails.

1 **I. PARTIES**

2 **A. Plaintiffs**

3 23. Plaintiff GIC, incorporated in 1981 under the Singapore Companies
4 Act and wholly owned by the Government of Singapore, is headquartered in
5 Singapore and has nine offices worldwide, including one in New York. As set forth
6 herein, GIC purchased Certificates at prices artificially inflated by Defendants'
7 misconduct and materially false and misleading disclosures and suffered substantial
8 damage as a result.
9

10 24. GIC is an experienced and substantial auto loan ABS investor. During
11 the prior decade, GIC has invested extensively in auto loan ABS. GIC's auto loan
12 ABS investments are made across the capital structure (from highly-rated notes to
13 unrated residuals), based on GIC's assessments of collateral quality and relative
14 value. GIC is familiar with most auto loan ABS issuance shelves that offer
15 programmatic auto loan ABS issuance, and has invested in at least twenty of them
16 (while choosing to avoid others).
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25. GIC made the following Certificate purchases:

GIC's Certificate Investments

TCF Securitization	TCF 2015-2		TCF 2016- DP1	TCF 2016-1
Purchase Date	November 20, 2015	September 30, 2016	June 23, 2016	September 16, 2016
Certificates Purchased	70,000	30,000	100,000	100,000
Certificates Purchased (% of Total Certificate Issuance)	70.0%	30.0%	100.0%	100.0%
Purchase Price	\$10,010,000	\$2,863,050	\$21,000,000	\$27,610,000

26. Plaintiff Good Hill Fund, a Cayman Islands exempted limited partnership, is an investment fund that holds securities that are purchased, sold and managed exclusively by Plaintiff GHP. Plaintiff Good Hill Capital, a Delaware limited liability company with its registered office in Delaware, is the general partner of Plaintiff Good Hill Fund. As set forth herein, Good Hill Capital and the Good Hill Fund were induced by Defendants into purchasing Certificates at prices artificially inflated by Defendants' intentional misconduct and materially false and misleading disclosures, upon which Good Hill Capital, the Good Hill Fund, and GHP relied when making investment decisions, and suffered substantial damage as a result.

27. Plaintiff GHP, an SEC-registered investment adviser organized under Delaware law and with a principal place of business at One Greenwich Office Park, Greenwich CT 06831, is the sole investment advisor for the Good Hill Fund and, pursuant to an Investment Management Agreement by and between the Good Hill Fund and GHP, has full discretionary authority to make investment decisions and to execute securities transactions on behalf of the Good Hill Fund.

28. GHP is an experienced and substantial auto loan ABS investor, and its investment personnel have decades of experience in ABS banking and investing. Since its founding in 2006, GHP, on behalf of the investment funds and managed accounts that it advises, has made over 4,000 ABS investments totaling more than \$7 billion, including more than 500 auto ABS investments totaling more than \$1 billion and issued through at least 28 different auto ABS issuance shelves.

29. Good Hill made the following Certificate purchases:

Good Hill's Certificate Investments

TCF Securitization	TCF 2014-1	TCF 2015-1
Settlement Date	July 23, 2014	June 11, 2015
Certificates Purchased	27,272	38,000
Certificates Purchased (% of Total Certificate Issuance)	27.3%	38.0%
Purchase Price	\$5,000,048	\$10,925,000

1 30. Plaintiff, the AC Fund, an exempted limited partnership organized
2 under the laws of the Cayman Islands, is an investment fund that holds securities
3 that are purchased, sold and managed exclusively by Axonic Capital, its New York-
4 based investment manager. Plaintiff Axonic Capital GP, a Delaware limited liability
5 company with its principal place of business at 390 Park Avenue, 15th Floor, New
6 York, New York 10022, is the general partner of Plaintiff, the AC Fund. As set
7 forth herein, the AC Fund and its general partner, Axonic Capital GP, purchased
8 Certificates at prices artificially inflated by Defendants' misconduct and materially
9 false and misleading disclosures and suffered substantial damage as a result.
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14 31. Plaintiff, the OC Fund, an exempted company organized in and under
15 the laws of the Cayman Islands and with its registered office in the Cayman Islands,
16 is an investment fund that holds securities that are purchased, sold, and managed
17 exclusively by Axonic Capital, its New York-based investment manager. As set
18 forth herein, the OC Fund purchased Certificates at prices artificially inflated by
19 Defendants' misconduct and materially false and misleading disclosures and
20 suffered substantial damage as a result.
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24 32. Plaintiff Axonic Capital, an SEC-registered investment adviser
25 organized under Delaware law and with a principal place of business at 390 Park
26 Avenue, 15th Floor, New York, NY 10022, serves as investment manager to certain
27 private investment funds and to certain other managed accounts.
28

33. Axonic Capital is an experienced and substantial auto loan ABS investor. Axonic Capital's primary investment focus is on structured credit products, including ABS. Axonic Capital's investment personnel have invested in ABS/RMBS for more than a decade, making, on behalf of the investment funds and managed accounts that it advises, more than 1,400 ABS/RMBS trades totaling \$6.6 billion, including more than 80 auto loan ABS trades, issued through at least 13 different auto loan ABS shelves, totaling more than \$380 million.

34. Axonic made the following Certificate purchases:

Axonic's Certificate Investments

TCF Securitization	TCF 2014-1	TCF 2015-1	TCF 2015-DP1
Purchase Date	July 18, 2014	June 9, 2015	September 25, 2015
Certificates Purchased	21,817	10,000	15,000
Certificates Purchased (% of Total Certificate Issuance)	21.8%	10.0%	15.0%
Purchase Price	\$3,999,929	\$2,875,000	\$4,350,000

35. Plaintiff Rimrock Fund is an exempted company organized in and under the laws of the Cayman Islands, with its registered office in the Cayman Islands. Rimrock Fund is an investment fund that holds securities that are purchased, sold, and managed exclusively by Rimrock Capital, its California-based investment manager.

1 36. Plaintiff Rimrock Capital, a limited liability company organized under
2 the laws of California with its principal place of business in Irvine, California, is an
3 SEC-registered investment adviser focused on multi-sector, hedged fixed income
4 strategies. Rimrock Capital sponsors and manages various investment funds,
5 including the Rimrock Fund, for its investors. Rimrock Capital is the sole
6 investment manager for the Rimrock Fund and, pursuant to the Investment
7 Management Agreement, has full discretionary authority to make investment
8 decisions and to execute securities transactions on behalf of the Rimrock Fund. As
9 set forth herein, Rimrock purchased Certificates at prices artificially inflated by
10 Defendants' misconduct and materially false and misleading disclosures and
11 suffered substantial damage as a result.

12
13
14 37. Rimrock Capital is an experienced and substantial auto loan ABS
15 investor. The majority of Rimrock Capital's current \$4 billion+ assets under
16 management are structured products, including ABS, RMBS and CMBS, and
17 Rimrock Capital has made annual structured product purchases of between \$800
18 million and \$1.6 billion each year since 2013. The individual primarily responsible
19 for Rimrock Capital's ABS and non-agency RMBS investments has nearly two
20 decades of structured product experience. Rimrock Capital invests in auto loan ABS
21 across the capital structure, at senior and subordinate levels, and has purchased 20

different auto loan ABS residuals (*i.e.*, certificates) issued through eight different auto loan ABS shelves.

38. Rimrock made the following Certificate purchases:

Rimrock's Certificate Investments

TCF Securitization	TCF 2014-1
Settlement Date	July 17, 2014
Certificates Purchased	21,457
Certificates Purchased (% of Total Certificate Issuance)	21.5%
Purchase Price	\$3,933,922

B. Defendants

1. Gateway

39. Defendant Gateway, a Delaware limited liability corporation with its principal executive offices located at 160 North Riverview Drive, Suite 100, Anaheim, CA 92808, was – as further detailed herein – the “sponsor” of each of TCF Securitizations, and the servicer, originator and custodian of all the auto loans underlying the TCF Securitizations (the “Underlying Receivables”). As sponsor of the TCF Securitizations, Gateway was their prime mover, and authored and provided, among other things, the materially misleading CNL information contained

1 in the Offering Documents and Supplemental Data, which Plaintiffs relied upon
2 when making their decisions to invest in the Certificates.
3

4 40. Gateway was founded in 2007 by its co-founders Brian MacInnis and
5 David MacInnis, who at all times thereafter until January 2017 served as Gateway's
6 CEO and President, respectively. In November 2011, Gateway was acquired by
7 TCF Bank, becoming a wholly owned subsidiary of TCF Bank and an indirect
8 wholly-owned subsidiary to TCF Bank's ultimate parent company, TCF Financial.
9
10

11 41. At all times through November 2017, Gateway focused on indirect
12 automobile finance, by originating and servicing loans for automobile purchases
13 through a network of more than 11,000 automobile franchises and dealers, and,
14 between 2014 and 2016, by securitizing many of the auto loans it originated,
15 including through the TCF Securitizations at issue here. During the first half of
16 2017, Gateway scaled back its auto loan securitization program, and in November
17 2017, TCF Financial directed Gateway to cease all further auto loan origination and
18 effectively exit the auto loan business. Immediately thereafter, Gateway began to
19 "wind down operations that support indirect auto originations" and lay off personnel
20 involved in such operations, and TCF Financial began to fold Gateway's remaining
21 operations – which post-November 2017, consisted of servicing the dwindling
22 "runoff" portfolio of auto loans previously originated by Gateway – back into TCF
23 Bank.
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2. TCF Auto

42. Defendant TCF Auto, a Delaware limited liability company formed by Gateway on April 22, 2014, with a principal place of business at 200 Lake Street East, Wayzata, Minnesota 55391, and a wholly-owned special purpose bankruptcy remote subsidiary of Gateway, served as the “depositor” for each of the TCF Securitizations.

43. TCF Auto was formed and employed by Defendants as an intermediary cog in the creation and organization of the TCF Securitizations, in order to make such securitizations “bankruptcy remote” from Gateway. To do so, and in connection with each of the TCF Securitizations, TCF Auto:

a. acquired from Gateway motor vehicle retail sales contracts originated and serviced by Gateway, and

b. sold, assigned, transferred, pledged, and/or granted security interests in such contracts to the TCF Issuing Trusts.

44. TCF Auto is an affiliate of Gateway, TCF Bank, and the TCF Issuing Trusts. TCF Auto is a direct or indirect Gateway subsidiary, and an indirect subsidiary of TCF Bank.

45. As a SPV formed and employed by Gateway for effecting ABS securitizations such as the TCF Securitizations in a bankruptcy-remote manner, TCF Auto, like the below-discussed TCF Issuing Trusts (*see* Section I.B.4, *infra*), has

1 only a ‘paper’ existence. It does not have any offices or employees of its own, but
2 instead utilizes those of Gateway and/or Gateway’s affiliates (such as TCF Financial
3 and TCF Bank).

4 **3. TCF Bank**

5
6 46. Defendant TCF Bank, a national banking association organized under
7 the laws of the United States with headquarters located at 2508 South Louise
8 Avenue, Sioux Falls, South Dakota 57106, served as the “administrator” of each of
9 the TCF Securitizations. As such, TCF Bank provided administrative and
10 ministerial services to the TCF Issuing Trusts, pursuant to an administration
11 agreement between TCF Bank, US Bank, and each of the TCF Issuing Trusts.
12

13
14 47. TCF Bank is an affiliate of Gateway, TCF Auto, and the TCF Issuing
15 Trusts. Gateway is a wholly-owned subsidiary of TCF Bank, as are TCF Auto and
16 the TCF Issuing Trusts.
17

18
19 48. TCF Bank and Gateway shared common personnel. For example,
20 Brian MacInnis, Gateway’s co-founder and CEO, also had the title of Executive
21 Vice President for National Consumer Lending at TCF Bank. Similarly, Sydney
22 Libsack, a Gateway senior vice president, was also a senior vice president for retail
23 lending at TCF Bank.
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4. The TCF Issuing Trusts

49. Defendant TCF 2014-1 is a statutory trust formed by TCF Auto on July 1, 2014, under the laws of the state of Delaware, for the sole and specific purpose of acquiring certain Gateway-originated and Gateway-serviced motor vehicle retail sales contracts and securitizing them through transactions structured and sponsored by Gateway. TCF 2014-1 served as the issuing entity for the TCF 2014-1 Certificates (and Notes).

50. Defendant TCF 2015-1 is a statutory trust formed by TCF Auto on April 8, 2015, under the laws of the state of Delaware, for the sole and specific purpose of acquiring certain Gateway-originated and Gateway-serviced motor vehicle retail sales contracts and securitizing them through transactions structured and sponsored by Gateway. TCF 2015-1 served as the issuing entity for the TCF 2015-1 Certificates (and Notes).

51. Defendant TCF 2015-DP1 is a statutory trust formed by TCF Auto on April 8, 2015, under the laws of the state of Delaware, for the sole and specific purpose of acquiring certain Gateway-originated and Gateway-serviced motor vehicle retail sales contracts and securitizing them through transactions structured and sponsored by Gateway. TCF 2015-DP1 served as the issuing entity for the TCF 2015-DP1 Certificates (and Notes).

1 52. Defendant TCF 2015-2 is a statutory trust formed by TCF Auto on
2 October 8, 2015, under the laws of the state of Delaware, for the sole and specific
3 purpose of acquiring certain Gateway-originated and Gateway-serviced motor
4 vehicle retail sales contracts and securitizing them through transactions structured
5 and sponsored by Gateway. TCF 2015-2 served as the issuing entity for the TCF
6 2015-2 Certificates (and Notes).
7

8
9 53. Defendant TCF 2016-DP1 is a statutory trust formed by TCF Auto on
10 October 8, 2015, under the laws of the state of Delaware, for the sole and specific
11 purpose of acquiring certain Gateway-originated and Gateway-serviced motor
12 vehicle retail sales contracts and securitizing them through transactions structured
13 and sponsored by Gateway. TCF 2016-DP1 served as the issuing entity for the TCF
14 2016-DP1 Certificates (and Notes).
15
16

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18 54. Defendant TCF 2016-1 is a statutory trust formed by TCF Auto on
19 October 8, 2015, under the laws of the state of Delaware, for the sole and specific
20 purpose of acquiring certain Gateway-originated and Gateway-serviced motor
21 vehicle retail sales contracts and securitizing them through transactions structured
22 and sponsored by Gateway. TCF 2016-1 served as the issuing entity for the TCF
23 2016-1 Certificates (and Notes).
24
25
26

27 55. The TCF Issuing Trusts have no officers, directors, employees, or
28 offices of their own. They were created by Defendants, through TCF Auto, solely

1 to effect the TCF Securitizations, by acquiring the Underlying Receivables from
2 Gateway (through TCF Auto) and pledging them pursuant to respective indentures,
3 and issuing and making payments on the Notes and Certificates. Each of the TCF
4 Issuing Trusts has nominal principal offices in Wilmington, Delaware, in care of
5 Wilmington as owner trustee for each of the TCF Securitizations (and for TCF 2014-
6 1, in care of Wells Fargo Delaware Trust Company, N.A. as owner trustee). As they
7 are without any employees, the TCF Issuing Trusts do not perform any actions
8 themselves, but rather engage other entities to perform all requisite actions for them,
9 including Gateway (sponsor, originator, and servicer), TCF Auto (depositor), TCF
10 Bank (administrator), US Bank (indenture trustee), Wilmington (owner trustee), and
11 the Initial Purchasers.
12

13
14 56. The TCF Issuing Trusts are affiliates of Gateway, TCF Bank, and TCF
15 Auto. Each of the TCF Issuing Trusts are direct or indirect subsidiaries of TCF
16 Auto, Gateway, and TCF Bank.
17

18 **C. Non-Parties**

19 **1. TCF Financial**

20 57. TCF Financial, a Delaware corporation with principal executive
21 offices located at 200 Lake Street East, Wayzata, MN 55391-1693, is a public
22 national bank holding company whose shares of common stock trade on the New
23 York Stock Exchange under the ticker "TCF." Through its operating subsidiaries,
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1 principally TCF Bank and Gateway, TCF Financial (1) provides retail and
2 commercial banking products and conducts commercial leasing and equipment
3 finance business (TCF Bank), and (2) conducts indirect auto finance business
4 (Gateway). TCF Financial is the ultimate parent company of Gateway, TCF Bank,
5 TCF Auto, and the TCF Issuing Trusts, all of which are direct or indirect wholly-
6 owned subsidiaries of TCF Financial.
7
8

9 10 **2. The TCF Securitizations' Trustees**

11 58. US Bank, a national banking association with its principal place of
12 business at 800 Nicollet Mall, Minneapolis, MN 55402, serves as the indenture
13 trustee, registrar, note paying agent, and certificate paying agent in connection with
14 each of the TCF Securitizations. US Bank's corporate trust office located at 190
15 South LaSalle Street, Mail Code MK-IL-SL7C, Chicago, IL 60603 administers the
16 indentures for each of the TCF Securitizations. Under the terms of the indentures
17 for each of the TCF Securitizations, US Bank is responsible for securities
18 administration, including pool performance calculations, distribution calculations
19 and the preparation of monthly distribution reports (the "Monthly Reports"). For
20 providing such services, US Bank receives compensation as follows:
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TCF Securitization	Indenture Trustee fees
TCF 2014-1	\$11,500 per annum plus expenses
TCF 2015-1	\$14,000 per annum plus expenses
TCF 2015-DP1	\$13,000 per annum plus expenses
TCF 2015-2	\$14,000 per annum plus expenses
TCF 2016-DP1	\$13,000 per annum plus expenses
TCF 2016-1	\$14,000 per annum plus expenses

59. Wilmington, a national banking association with its principal place of business at 1100 North Market Street, Wilmington, DE 19890, serves as the owner trustee in connection with each of the TCF Securitizations (apart from TCF 2014-1, for whom the owner trustee was Wells Fargo Delaware Trust Company, N.A.). Pursuant to governing trust agreements, the role of the owner trustee is quite limited: in certain circumstances, the owner trustee will act concerning management of the TCF Issuing Trusts when so directed by TCF Bank (the administrator) or the Certificateholders. For providing such services, the owner trustee receives compensation as follows:

TCF Securitization	Owner Trustee fees
TCF 2014-1	\$4,000 per annum plus expenses
TCF 2015-1	\$4,000 per annum plus expenses
TCF 2015-DP1	\$4,000 per annum plus expenses
TCF 2015-2	\$4,000 per annum plus expenses
TCF 2016-DP1	\$4,000 per annum plus expenses
TCF 2016-1	\$4,000 per annum plus expenses

3. The TCF Securitizations' Initial Purchasers

60. Credit Suisse, Wells Fargo, Citigroup, and Morgan Stanley served as the Initial Purchasers and/or placement agents in connection with the TCF Securitizations, as detailed in table below. Pursuant to respective Note purchase agreements between themselves and TCF Auto, Credit Suisse, Wells Fargo, Citigroup, and Morgan Stanley – as placement agents and/or Initial Purchasers – agreed to purchase the Notes and Certificates issued in connection with each of the TCF Securitizations and offer such Notes and Certificates to qualified institutional buyers, such as Plaintiffs.

TCF Securitization	Certificate Initial Purchaser(s)	Note Initial Purchasers
TCF 2014-1	Credit Suisse	Credit Suisse Morgan Stanley
TCF 2015-1	Credit Suisse	Credit Suisse Wells Fargo
TCF 2015-DP1	Wells Fargo	Unknown
TCF 2015-2	Credit Suisse	Credit Suisse Wells Fargo
TCF 2016-DP1	Wells Fargo	Wells Fargo
TCF 2016-1	Credit Suisse	Credit Suisse Wells Fargo Citigroup

II. THE TCF SECURITIZATIONS, THE CERTIFICATES, THE OFFERING DOCUMENTS, AND THE SUPPLEMENTAL DATA

A. The TCF Securitizations

61. As summarized at Exhibit 1 hereto, and discussed in the ensuing paragraphs, Defendants created each of the TCF Securitizations as follows:

62. As demonstrated in Exhibit 1 hereto, Gateway, as sponsor of each of the TCF Securitizations, recruited an effectively identical cast of transaction parties – principally, Gateway’s co-Defendants – to effect each of the TCF Securitizations, including:

a. empty-shell SPVs created and formed by Gateway, through its wholly-owned subsidiary TCF Auto, to serve as issuing trusts for the securitization of the Underlying Receivables, namely the TCF Issuing Trusts (TCF 2014-1, TCF 2015-1, TCF 2015-DP1, TCF 2015-2, TCF 2016-DP1 and TCF 2016-1);

1 b. Gateway itself, to originate, directly or indirectly, the
2 Underlying Receivables, and to service them;

3
4 c. Gateway's wholly-owned subsidiary TCF Auto, to whom to sell
5 the Underlying Receivables, and who in turn sold the Underlying Receivables to the
6 TCF Issuing Trusts, thereby making the TCF Issuing Trusts "bankruptcy remote"
7 from Gateway;
8

9
10 d. TCF Bank, to serve as administrator for each of the TCF
11 Securitizations;

12
13 e. US Bank and Wilmington, to serve respectively as indenture
14 trustee and owner trustee for each of the TCF Securitizations; and

15
16 f. the Initial Purchasers, to purchase the Certificates and Notes
17 issued through the TCF Securitizations and thereafter market and/or sell them to
18 qualified institutional buyers such as, and including, Plaintiffs.
19

20 63. As further indicated in Exhibit 1, Gateway, as the TCF Securitizations'
21 sponsor and structurer, and as originator of the Underlying Receivables, originated,
22 assembled, and selected, for each of the TCF Securitizations, a pool of auto loans
23 meeting certain "eligibility criteria," as set forth in the Offering Documents, to serve
24 as each securitization's Underlying Receivables, including, as summarized in
25 Exhibit 1:
26
27
28

1 a. the pool of 14,898 auto loans serving as the Underlying
2 Receivables for TCF 2014-1, with an aggregate initial principal balance of \$250
3 million, a weighted average annual percentage rate of 8.24%, a weighted average
4 borrower FICO score of 691, and a weighted average initial term of 67 months;
5

6 b. the pool of 24,841 auto loans serving as the Underlying
7 Receivables for TCF 2015-1, with an aggregate initial principal balance of \$425
8 million, a weighted average annual percentage rate of 8.99%, a weighted average
9 borrower FICO score of 680, and a weighted average initial term of 67 months;
10

11 c. the pool of 24,045 auto loans serving as the Underlying
12 Receivables for TCF 2015-DP1, with an aggregate initial principal balance of \$425
13 million, a weighted average annual percentage rate of 8.92%, a weighted average
14 borrower FICO score of 679, and a weighted average initial term of 67 months;
15

16 d. the pool of 14,376 auto loans serving as the Underlying
17 Receivables for TCF 2015-2, with an aggregate initial principal balance of \$250
18 million, a weighted average annual percentage rate of 9.03%, a weighted average
19 borrower FICO score of 680, and a weighted average initial term of 66 months;
20

21 e. the pool of 23,258 auto loans serving as the Underlying
22 Receivables for TCF 2016-DP1, with an aggregate initial principal balance of \$400
23 million, a weighted average annual percentage rate of 8.23%, a weighted average
24 borrower FICO score of 683, and a weighted average initial term of 66 months; and
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1 f. the pool of 29,661 auto loans serving as the Underlying
2 Receivables for TCF 2016-1, with an aggregate initial principal balance of \$500
3 million, a weighted average annual percentage rate of 8.27%, a weighted average
4 borrower FICO score of 684, and a weighted average initial term of 66 months.
5

6 64. As summarized in Exhibit 1, Gateway, as the TCF Securitizations'
7 sponsor and structurer, structured each of the TCF Securitizations into a set of
8 tranches senior and subordinated Notes and Certificates backed by (and based on)
9 differently-prioritized claims to the Gateway-selected Underlying Receivables and
10 their associated cashflows, including:
11

12 a. for each of the TCF Securitizations, a set of Notes with an initial
13 par value equivalent to the aggregate initial principal balance of the pooled
14 Underlying Receivables, namely:
15

16 i. \$250 million of Notes issued by TCF 2014-1, backed by
17 TCF 2014-1's \$250 million of Underlying Receivables;
18

19 ii. \$425 million of Notes issued by TCF 2015-1, backed by
20 TCF 2015-1's \$425 million of Underlying Receivables;
21

22 iii. \$425 million of Notes issued by TCF 2015-DP1, backed
23 by TCF 2015-DP1's \$425 million of Underlying Receivables;
24

25 iv. \$250 million of Notes issued by TCF 2015-2, backed by
26 TCF 2015-2's \$250 million of Underlying Receivables;
27
28

1 v. \$400 million of Notes issued by TCF 2016-DP1, backed
2 by TCF 2016-DP1's \$400 million of Underlying Receivables; and
3

4 vi. \$500 million of Notes issued by TCF 2016-1, backed by
5 TCF 2016-1's \$500 million of Underlying Receivables;
6

7 b. for at least TCF 2014-1, TCF 2015-1, TCF 2015-2 and TCF
8 2016-1, multiple classes of Notes bearing differently-prioritized relationships to the
9 Underlying Receivables' cash flows, including:
10

11 i. multiple classes of senior Class A Notes, bearing most
12 senior claims to the Underlying Receivables' cash flows, lower coupons, and triple-
13 A credit ratings (including short-term Class A-1 Notes, and progressively longer-
14 term Class A-2, A-3 and A-4 Notes);
15
16

17 ii. more junior Class B Notes bearing subordinated claims to
18 the Underlying Receivables' cash flows, slightly higher coupons, and double-A
19 credit ratings;
20

21 iii. yet more junior Class C Notes bearing more subordinated
22 claims to the Underlying Receivables' cash flows, higher coupons, and single-A
23 credit ratings; and
24

25 iv. Class D Notes, bearing yet-more subordinated claims to
26 the Underlying Receivables' cash flows, higher coupons, and triple-B credit ratings
27 (except for TCF 2014-1, where no Class D Notes were issued);
28

1 c. for each of the TCF Securitizations, a set of 100,000 Certificates,
2 representing the entire beneficial interest in each of the TCF Issuing Trusts, as
3
4 further discussed in Section II.B below; and

5 d. for each of the TCF Securitizations, additional structural
6 mechanisms providing additional credit protection to the TCF Securitizations’
7
8 Notes, including:

9
10 i. the establishment of “overcollateralization” for the Notes,
11 by directing that the TCF Securitizations’ priority of payments function to direct
12 certain *initial* residual securitization cash flows (*i.e.*, cash flows that would
13 otherwise have flowed to the Certificates) to Noteholders instead, as principal
14 repayments, so that the aggregate principal amount of the Underlying Receivables
15 would exceed the aggregate principal amount of outstanding Notes (meaning that
16 the Underlying Receivables *over*-collateralize the Notes). Specifically, under the
17 TCF Securitizations’ governing priority of payments, initial residual cashflows were
18 directed to provide Noteholder principal payments until a specific targeted level of
19 overcollateralization is reached (the Targeted Overcollateralization Amounts), and
20 subsequent cashflows were to be redirected as necessary to maintain such Targeted
21 Overcollateralization Amounts through the life of the securitizations:
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27 1. for TCF 2014-1, 1.0% of the initial pool balance of
28 the Underlying Receivables, or \$2.5 million;

1 2. for TCF 2015-1, 1.0% of the initial pool balance of
2 the Underlying Receivables, or \$4.25 million;

3 4. for TCF 2015-DP1, 1.0% of the initial pool balance
4 of the Underlying Receivables, or \$4.25 million;

5 6. for TCF 2015-2, 1.1% of the initial pool balance of
6 the Underlying Receivables, or \$2.75 million;

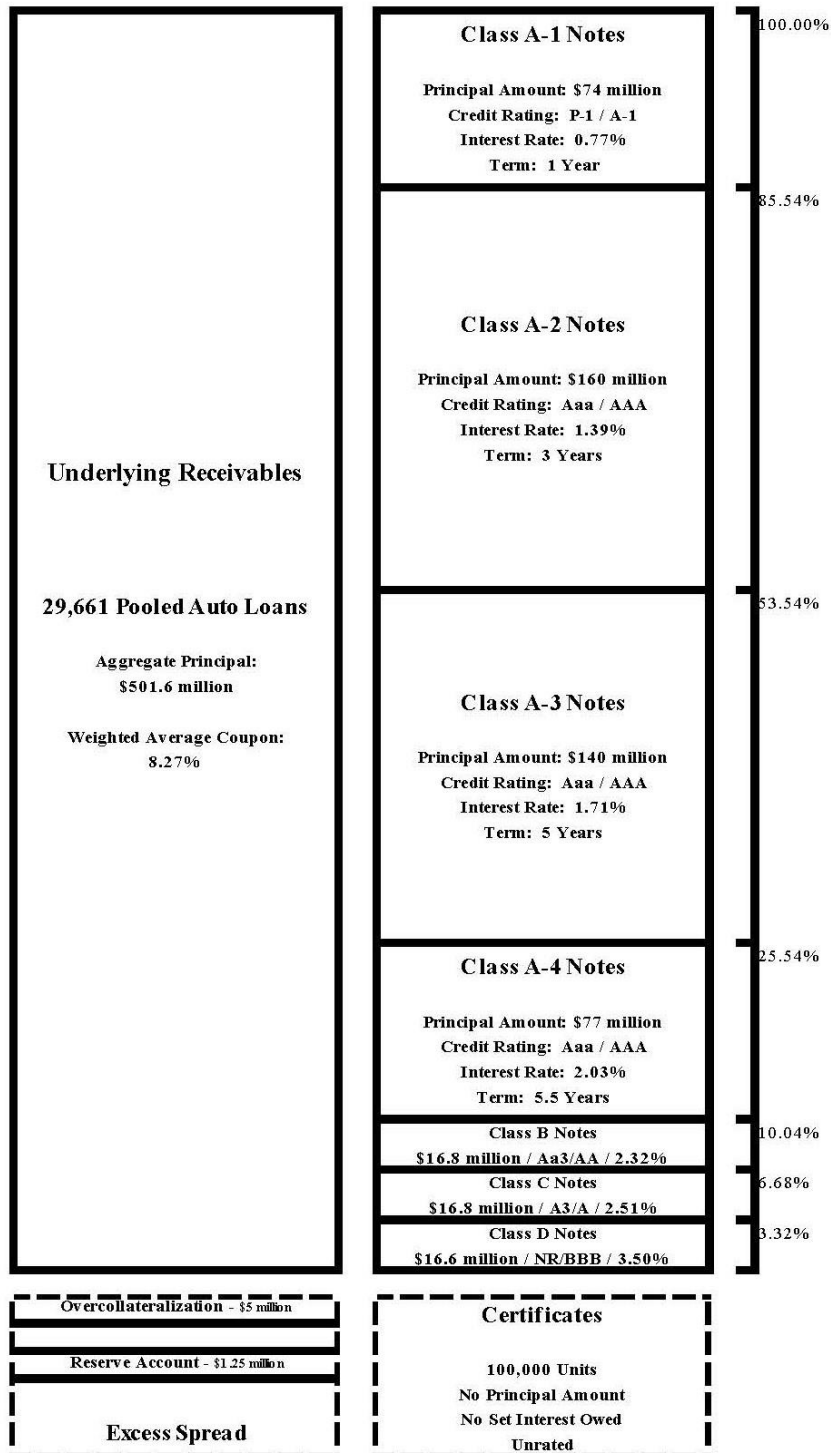
7 7. for TCF 2016-DP1, 0.25% of the initial pool
8 balance of the Underlying Receivables, or \$1 million;

9 8. for TCF 2016-1, 1.0% of the initial pool balance of
10 the Underlying Receivables, or \$5.0 million; and

11 ii. the establishment, in all the TCF Securitizations except
12 for TCF 2016-DP1, of an additional “specified reserve account balance” amounting
13 in each case to 0.25% of the initial pool balance of the Underlying Receivables,
14 likewise to be funded and replenished by residual cash flows, as added funds
15 available to satisfy obligations to Noteholders in the event that normal cash flows
16 failed to do so (primarily due to technical timing matters, such as disjunctures in the
17 payment schedules associated with the Underlying Receivables, on the one hand,
18 and the Notes/Transaction Parties, on the other).

19 65. Such structuring is graphically depicted at accurate scale, using TCF
20 2016-1 as an illustrative example, on the following page. The structure of the other

1 TCF Securitizations was substantially identical to the structuring of TCF 2016-1
2 (with the possible and here-irrelevant exception of TCF 2015-DP1 and TCF 2016-
3 DP1, for which no information concerning structuring of the Notes into different
4 classes is publicly available).
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TCF 2016-1 Structure (to scale)**TCF 2016-1 Assets****TCF 2016-1 Liabilities**

1 **B. The Certificates**

2 67. Defendants structured each of the TCF Securitizations to include, and
3
4 caused each of the TCF Securitizations to issue, a set of 100,000 Certificates.

5 68. Unlike the Notes issued in connection with the TCF Securitizations,
6
7 the Certificates do not accrue interest and are not entitled to scheduled distributions
8
9 of interest and principal.

10 69. Instead, the Certificates represent the entire beneficial (*i.e.*, residual)
11
12 interest in each of the TCF Issuing Trusts. Such interest consisted, specifically, of
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14 each TCF Securitization's residual cash flows, to the extent any existed, following
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16 satisfaction of the securitizations' more senior obligations to (a) Noteholders (*i.e.*,
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18 payment of interest coupons and repayment of principal), and (b) Transaction
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20 Parties (*i.e.*, servicer fees and expenses, trustee fees and expenses, and any further
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22 expenses borne or incurred by the TCF Issuing Trusts). Such residual cash flows
23
24 are often referred to as first loss positions or "excess spread." Excess spread refers
25
26 to the amount of funds generated by a securitization's underlying assets *over and*
27
28 *above* the amount of funds the securitization is obligated to pay out (*e.g.*, to
Noteholders, Transaction Parties and other securitization service providers).¹

¹ ABS securitization structure generates excess spread, as the structural depiction of TCF 2016-1 helps to illustrate (*see* p. 37 *supra*), in largest part by the creation of large classes of senior notes (*e.g.*, the Class A Notes), well-protected from underlying asset principal losses by all more junior notes, that bear relatively low interest coupons in light of such safety. Thus, while the TCF Securitizations' assets (*i.e.*, the pools of Underlying Receivables) bore average interest coupons of 8%-9%, approximately 80% of the TCF Securitizations' liabilities (the senior Class A Notes) bore interest rates of only 0.25%-2%. *See* Exhibit 1. In other words, the TCF Securitizations received 8%-9% returns on

1 70. The Certificates' returns, and thus the Certificates' value, are thus a
2 direct function of, and dependent on, the amount of excess spread generated by the
3 TCF Securitizations.
4

5 71. As further detailed in Section III below, because the TCF
6 Securitizations' excess spread is simply the difference between (1) the cash flows
7 generated by their Underlying Receivables, and (2) their more senior payment
8 obligations to Noteholders (coupons) and Transaction Parties (fees and expenses),
9 the Certificates' returns, and thus the Certificates' value, are dependent on and a
10 function of (1) the performance of the TCF Securitizations' Underlying Receivables,
11 and (2) the TCF Securitizations' obligations to Noteholders and Transaction Parties.
12 If the TCF Securitizations' Underlying Receivables perform poorly, excess spread,
13 squeezed from the top line, can diminish or vanish, and cause Certificate returns to
14 diminish or turn negative. Similarly, the higher the TCF Securitizations' senior
15 payment obligations are (*e.g.*, the higher the fees and expenses paid out to Gateway
16 for serving as the TCF Securitizations' servicer), the greater the squeeze on excess
17 spread from the bottom line, and concomitant diminishment of Certificate returns.
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24 72. As indicated in Exhibit 1, the residual cash flows or excess spread in
25 auto ABS such as the TCF Securitizations can be substantial.
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100% of their assets, but paid out only 0.25%-2.00% on 80% of their liabilities, and this gap between "money in" and "money out" was primarily responsible for generating the TCF Securitizations' excess spread.

1 a. For example, at issuance, the weighted average annual interest
2 rate generated by TCF 2015-2's Underlying Receivables was 9.03%. However, the
3
4 weighted average annual interest rate coupon on TCF 2015-2's Notes was, at the
5
6 same time, only 1.97%, while fees payable to Transaction Parties consisted almost
7
8 entirely of the 1.00% annual fee to the servicer (with additional *de minimis* fees
9
10 payable to the trustees and additional expenses incurred by the TCF Issuing Trusts
11
12 adding less than 0.10% in annual expenses, at issuance). Thus, at issuance, TCF
13
14 2015-2 was structured to generate excess spread of approximately 6% (the 9.07%
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16 generated by the Underlying Receivables and taken in by TCF 2015-2, minus the
17
18 1.97% in annual noteholder coupon obligations and the 1.10% in annual fee/expense
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20 obligations to Transaction Parties that TCF 2015-2 was obligated to pay out).

21 b. Likewise, at issuance, the weighted average annual interest rate
22
23 generated by TCF 2016-1's Underlying Receivables was 8.27%. However, the
24
25 weighted average annual interest rate coupon on TCF 2016-1's Notes was, at the
26
27 same time, only 1.63%, while fees payable to Transaction Parties consisted almost
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entirely of the 1.00% annual fee to the servicer (with additional *de minimis* fees
payable to the trustees and additional expenses incurred by the TCF Issuing Trusts
adding less than 0.10% in annual expenses, at issuance). Thus, at issuance, TCF
2016-1 was structured to generate excess spread of approximately 5.5% (the 8.27%
generated by the Underlying Receivables and taken in by TCF 2016-1, minus the

1 1.97% in annual noteholder coupon obligations and the 1.10% in annual fee/expense
2 obligations to Transaction Parties that TCF 2016-1 was obligated to pay out).

3
4 73. The above illustrations are simplified, and overstate the excess spread
5 generated by the TCF Securitizations. For example, they ignore the requirements
6 that excess spread be initially directed to funding overcollateralization to targeted
7 levels (\$2.75 million for TCF 2015-2, \$5.0 million for TCF 2016-1). Likewise, they
8 also ignore the winnowing of excess spread over the life of the securitizations, from
9 both the top line and the bottom line, due *inter alia* to the amortization of the
10 Underlying Receivables due to voluntary principal prepayments (diminishing
11 excess spread from the top line, as the asset pool generating the excess spread
12 shrinks), as well as the related amortization of the senior Class A Notes (diminishing
13 excess spread from the bottom line, by leaving ever higher weighted average
14 coupons on the remaining, higher-coupon notes still outstanding). Notwithstanding
15 such and other simplifications, they are directionally correct. For example, more
16 sophisticated analysis conducted by S&P calculated excess spread for TCF 2015-2
17 as 5.41%, and for TCF 2016-1 as 5.06%.²

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24 74. At their offering and/or initial placement, the Certificates were not
25 issued, offered, marketed, and/or sold at a set price. Instead, Defendants and/or the
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² See, respectively, S&P November 10, 2015 presale report for TCF 2015-2, at 4, and S&P September 8, 2016 presale report for TCF 2016-1, at 2.

Initial Purchasers marketed the Certificates with pricing “guidance” based on their proffered modeling of the Underlying Receivables’ prospective performance and TCF Securitizations’ prospective cashflows, and sought and accepted bids from Plaintiffs and other prospective investors based (as detailed herein) on Plaintiffs’ own evaluation, modeling and pricing of such performance and cashflows.

C. The Offering Documents

75. The Certificates were issued and sold pursuant to the Offering Documents identified below:

TCF Securitization Offering Documents

	Certificates Preliminary Private Placement Memorandum, dated	Notes Offering Memorandum , dated	Notes Preliminary Offering Memorandum Supplement, dated	Notes Final Offering Memorandum Supplement, dated
TCF 2014-1	July 9, 2014	July 9, 2014	July 9, 2014	July 16, 2014
TCF 2015-1	May 28, 2015	May 28, 2015	May 28, 2015	June 3, 2015
TCF 2015-DP1	September 28, 2015	n/a	n/a	n/a
TCF 2015-2	November 10, 2015	November 9, 2015	November 9, 2015	November 18, 2015
TCF 2016-DP1	June 27, 2016	n/a	n/a	n/a
TCF 2016-1	September 8, 2016	September 7, 2016	September 7, 2016	September 14, 2016

1 76. In the first instance, the Certificates for each of the TCF Securitizations
2 were issued and sold pursuant to private placement memorandums that related
3 specifically to the Certificates (as opposed to the Notes), including:
4

5 a. the TCF 2014-1 Certificate PPM, a preliminary private
6 placement memorandum dated July 9, 2014;
7

8 b. the TCF 2015-1 Certificate PPM, a preliminary private
9 placement memorandum dated May 28, 2015;
10

11 c. the TCF 2015-DP1 Certificate PPM, a certificate offering
12 memorandum dated September 28, 2015;
13

14 d. the TCF 2015-2 Certificate PPM, a preliminary private
15 placement memorandum dated November 10, 2015;
16

17 e. the TCF 2016-DP1 Certificate PPM, a certificate offering
18 memorandum dated June 27, 2016; and
19

20 f. the TCF 2016-1 Certificate PPM, a preliminary private
21 placement memorandum dated September 8, 2016.
22

23 77. In addition, the TCF 2014-1 Certificate PPM, TCF 2015-1 Certificate
24 PPM, TCF 2015-2 Certificate PPM and TCF 2016-1 Certificate PPM included, as
25 exhibits thereto, additional documents also relating to the Notes offered in the TCF
26 2014-1, TCF 2015-1, TCF 2015-2 and TCF 2016-1 securitizations.
27

28 a. The TCF 2014-1 Certificate PPM attached, as Exhibit A thereto:

1 i. the TCF 2014-1 Notes Preliminary OM, a preliminary
2 offering memorandum supplement dated July 9, 2014; and
3

4 ii. the Gateway 2014 OM, an offering memorandum for
5 Gateway's general auto securitization program, dated July 9, 2014.
6

7 b. The TCF 2015-1 Certificate PPM attached, as Exhibit A thereto:

8 i. the TCF 2015-1 Notes Preliminary OM, a preliminary
9 offering memorandum supplement dated May 28, 2015; and
10

11 ii. the Gateway May 2015 OM, an offering memorandum for
12 Gateway's general auto securitization program, dated May 28, 2015.
13

14 c. The TCF 2015-2 Certificate PPM attached, as Exhibit A thereto:

15 i. the TCF 2015-2 Notes Preliminary OM, a preliminary
16 offering memorandum supplement dated November 9, 2015; and
17

18 ii. the Gateway November 2015 OM, an offering
19 memorandum for Gateway's general auto securitization program, dated November
20 9, 2015.
21

22 d. The TCF 2016-1 Certificate PPM attached, as Exhibit A thereto:

23 i. the TCF 2016-1 Notes Preliminary OM, a preliminary
24 offering memorandum supplement dated September 7, 2016; and
25

26 ii. the Gateway 2016 OM, an offering memorandum for
27 Gateway's general auto securitization program, dated September 7, 2016.
28

1 78. The TCF 2014-1 Preliminary OM was later superseded by the TCF
2 2014-1 Notes OM, a final offering memorandum for the TCF 2014-1 Notes, dated
3 July 16, 2014. The TCF 2015-1 Preliminary OM was later superseded by the TCF
4 2015-1 Notes OM, a final offering memorandum for the TCF 2015-1 Notes, dated
5 June 3, 2015. The TCF 2015-2 Preliminary OM was later superseded by the TCF
6 2015-2 Notes OM, a final offering memorandum for the TCF 2015-2 Notes, dated
7 November 18, 2015. The TCF 2016-1 Preliminary OM was later superseded by the
8 TCF 2016-1 Notes OM, a final offering memorandum for the TCF 2016-1 Notes,
9 dated September 14, 2016. In all cases (*i.e.*, for the TCF 2014-1, TCF 2015-1, TCF
10 2015-2 and TCF 2016-1 securitizations), the preliminary and final versions of the
11 Notes offering memorandums were substantively identical, with the principal
12 difference being that the preliminary versions omitted the final note pricing (*i.e.*, the
13 interest rates offered on each Class of Notes) while the final versions provided such
14 information.

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21 79. The TCF Certificate PPMs stated that they included the exhibits thereto
22 (*i.e.*, the documents identified in ¶ 77, *supra*), and advised Certificate investors to
23 read all the documents together (*i.e.*, in addition to the TCF Certificate PPMs, the
24 Notes Offering Documents as well). The Notes Offering Documents were thus part
25 of the TCF Certificate PPMs (at least with respect to the TCF 2014-1, TCF 2015-1,
26 TCF 2015-2 and TCF 2016-1 Securitizations).

1 80. Defendants created and authored the Offering Documents.

2 81. In most cases, the TCF Certificate PPMs, relying on and referring to
3 more extensive information in related Notes Offering Documents (which formed a
4 part of the TCF Certificate PPMs), were typically shorter documents (for example,
5 the TCF 2016-1 Certificate PPM was approximately 40 pages), while the Notes
6 Offering Documents, which contained more extensive information, were
7 substantially longer (for example, the TCF 2016-1 Notes Preliminary OM and the
8 TCF 2016-1 Notes OM were approximately 140 pages, while the Gateway 2016
9 OM was approximately 70 pages).³

10 82. The Certificate PPMs for the TCF 2014-1, TCF 2015-1, TCF 2015-2
11 and TCF 2016-1 Securitizations consisted of (using the TCF 2016-1 Certificate PPM
12 as an illustrative example):

13 a. an initial preamble section, including cover pages containing
14 numerous boilerplate warning labels, and a table of contents (first seven pages,
15 including un-numbered pages and pp. i-v);

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³ The TCF 2015-DP1 Certificate PPM and TCF 2016-DP1 Certificate PPM diverged from this pattern because they were unaccompanied by any offering documents for the TCF 2015-DP1 Notes and the TCF 2016-DP1 Notes (which may have been sold privately to Wells Fargo and/or other purchasers). As a result, the TCF 2015-DP1 Certificate PPM and TCF 2016-DP1 Certificate PPM were substantially longer (~155 pages) than the other TCF Certificate PPMs, because they had to include within them the information that was normally placed in the Notes Offering Documents.

1 b. a “Summary of Terms” section providing an overview of
2 selected, salient information concerning the Certificates and TCF Securitization
3 structure and terms (pp. 1-5);

4
5 c. a “Risk Factors” section disclosing “the material risks” of
6 investing in the Certificates (pp. 6-9);

7
8 d. a “Description of the Certificates” section (pp. 10-13);

9
10 e. a “Sensitivity Analysis,” demonstrating the variability of
11 Certificate returns under various default/loss scenarios with respect to the
12 Underlying Receivables, utilizing particular assumptions concerning the
13 performance of the Underlying Receivables and other matters (pp. 14-15);

14
15 f. a section devoted to tax matters (pp. 16-25);

16
17 g. a section titled “Notice to Investors,” concerning certain
18 restrictions on the transfer or sale of the Certificates (pp. 26-30);

19
20 h. a section titled “Private Placement,” concerning the Initial
21 Purchasers’ efforts to market and sell the Certificates (pp. 30-31); and

22
23 i. a glossary of terms and index (pp. 32-34).

24
25 83. The Notes Offering Documents for the TCF 2014-1, TCF 2015-1, TCF
26 2015-2 and TCF 2016-1 Securitizations (using the TCF 2016-1 Notes OM as an
27 illustrative example) consisted of:
28

1 a. a similar initial preamble section, including cover pages
2 containing numerous boilerplate warning labels, a table of contents, and one-page
3 summary depictions of the transaction structure and flow of funds among the
4 Transaction Parties, and of the securitization's normal priority of payments (first ten
5 pages, including un-numbered pages and pp. i-viii);
6

7
8 b. an analogous, but substantially longer and more detailed
9 "Summary of Terms" section, providing an overview of selected, salient
10 information from the larger offering memorandum concerning the securitization
11 structure, the Notes and their terms (pp. S1-S12);
12

13
14 c. an analogous, but substantially longer and more detailed "Risk
15 Factors" section disclosing "the material risks" of investing in the Notes (pp. S13-
16 S26);
17

18
19 d. a series of sections identifying each of the Transaction Parties
20 (*e.g.*, the TCF Issuing Trust, the indenture trustee, the owner trustee, the depositor,
21 the originator and servicer, the administrator), and their roles in the securitizations
22 (pp. S27-S31);
23

24 e. a section titled "The Receivables Pool," providing extensive
25 statistical information on the credit characteristics of the Underlying Receivables,
26 including "stratifications" of the Underlying Receivables by annual percentage rate,
27 geography, FICO score, loan-to-value ratio, original term, remaining term,
28

1 seasoning, original principal balance, outstanding principal balance, quarter of
2 origination, vehicle model year, vehicle make and Gateway credit tier (pp. S31-
3 S40);
4

5 f. a section titled “Weighted Average Life of the Notes,”
6 illustrating, on the basis of certain assumptions concerning the performance of the
7 Underlying Receivables and other matters, prospective principal amortization and
8 repayment schedules for each class of Notes under different Underlying
9 Receivables’ prepayment scenarios (pp. S40-S53);
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11

12 g. a section titled “Origination and Servicing of the Underlying
13 Receivables,” consisting of:
14

15 i. a narrative summary of Gateway’s underwriting model
16 and procedures for the Underlying Receivables, Gateway’s servicing and collection
17 policies and procedures, including Gateway’s efforts to collect on delinquent loans,
18 repossess cars securitizing such delinquent loans, and sell such cars to recover
19 outstanding loan amounts, and Gateway’s charge-off policies (pp. S54-56);
20
21

22 ii. summary statistical information concerning the
23 delinquencies, defaults, repossession, and loss experience relating to Gateway’s
24 entire auto loan program (referred to as “managed pool” basis) (pp. S56-S58);
25
26

27 iii. extensive statistical information disaggregating the entire
28 Gateway “managed pool” data into a series of “static” loan pools by fiscal quarter

1 of loan origination (*e.g.*, loans originated in Q1 2009, Q2 2009, Q3 2009, etc.),
2 including extensive descriptive statistics relating to:
3

4 1. the credit quality of such static, quarterly loan pools
5 (*e.g.*, number of loans, aggregate and average principal balance,
6 weighted average interest rate, weighted average initial and
7 remaining terms, weighted average FICO scores, and
8 distributions by interest rate range, percentages of new/used
9 vehicles, and geography); and
10
11

12 2. the performance of such static, quarterly loan pools
13 (*e.g.*, delinquency rates, prepayment speeds, and CNL by
14 month), both for each such quarterly pool on an overall basis
15 (*i.e.*, for the entire quarterly pool) and as disaggregated within
16 each pool by Gateway's internal loan credit tiers (*e.g.*, for Tier 1
17 loans in the Q1 2009 pool, for Tier 2 loans on the Q1 2009 pool,
18 and for Tier 3 loans in the Q1 2009 pool) (pp. S59-S93).
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23 h. an analogous, but substantially longer and more detailed
24 "Description of the Notes" section, providing a summary of "all material provisions
25 of the notes" and their governing indenture, including Notes transfer restrictions,
26 payments of interest and principal, etc. (pp. S94-S101);
27
28

1 i. a section titled “The Transaction Documents and the Indenture,”
2 summarizing the structure and mechanics of the TCF Securitization, including: the
3 sale/assignment of the Underlying Receivables; the securitization’s priority of
4 payments; the fees and expenses owed to Transaction Parties, including the
5 servicing fee and supplemental servicing fees owed to the servicer; the credit
6 enhancement available to the Notes; the roles and responsibilities of the owner
7 trustee, indenture trustee and administrator; possible early redemption of the Notes;
8 servicer termination events and circumstances under which the servicer could be
9 removed or replaced; events of default and their consequences; and the provision of
10 monthly reports to Notes/Certificates holders (pp. S101-S120);
11

12 j. an analogous section devoted to tax matters (pp. S120-S123);
13

14 k. a final set of standard sections concerning, *inter alia*, the plan of
15 distribution with respect to the Notes, the use of forward-looking statements, and
16 the existence of material legal proceedings (pp. S124-S127); and
17

18 l. a glossary of terms and index (pp. S128-S135).
19

20 84. As detailed herein, the Offering Documents contained material
21 misrepresentations, misleading statements and omissions concerning, principally,
22 the CNL experience of Gateway-originated auto loans, and Plaintiffs relied upon
23 such material misrepresentations, misleading statements and omissions when
24 making the decision to invest in the Certificates.
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1 **D. The Supplemental Data**

2 85. As detailed in Section III.A *infra*, evaluation, valuation, and pricing of
3
4 ABS requires analysis of extensive data concerning: (1) the credit characteristics of
5 the pooled assets underlying the instant securitization; (2) the performance of
6 similar, prior asset pools, particularly with respect to the timing and extent of losses
7 (*i.e.*, CNL) and of voluntary prepayments; and (3) how the instant securitization
8 channels incoming cashflows from the underlying assets to transaction parties,
9 internal accounts, and note and certificate investors. As likewise detailed in Section
10 III.A *infra*, the first two sets of data are required to generate a “base case” view of
11 the prospective performance of the instant securitization’s pooled assets, and the
12 third to model how the underlying assets’ cashflows – in “base case” as well as
13 various “stress” scenarios – travel through the ABS securitization and to note and
14 certificate investors.
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20 86. Consequently, the provision of such data (“Supplemental Data”) to
21 prospective ABS investors, in usable and manipulable form (*e.g.*, excel
22 spreadsheets, or data files in other formats, etc.) is a standard and typical part of the
23 ABS securitization offering process.⁴ Typically, such data – especially concerning
24 the pooled assets underlying the instant securitization, and concerning the
25
26
27

28 ⁴ To a significant extent, such supplemental data merely reproduced in more usable form information already contained in ABS offering documents (and actually contained, as detailed herein, in the Offering Documents here). However, some of the Supplemental Data provided was additive (*e.g.*, disaggregation of CNL and/or prepayment information, within static quarterly pools, by credit tier/program) to the more aggregated information provided in the Offering Documents.

1 performance of prior assets pools originated and serviced by the same sponsor – is
2 assembled by the securitization’s sponsor, and then provided by the sponsor to the
3 securitization’s underwriters or initial purchasers for distribution to prospective
4 ABS investors.
5

6
7 87. In connection with each of the TCF Securitizations here:

8 a. Gateway assembled extensive Supplemental Data, detailed
9 specifically below, and provided it to the Initial Purchasers for distribution to
10 prospective Certificate (and Notes) investors, including Plaintiffs;
11

12 b. the Initial Purchasers provided such Supplemental Data to
13 Plaintiffs, who used it and relied on it in evaluating the TCF Securitizations, the
14 Certificates, the Certificates’ value, risk, and returns, whether or not to purchase the
15 Certificates, and the price at which to do so.
16
17

18 88. The Supplemental Data provided to Plaintiffs in connection with the
19 TCF Securitizations is summarized in Exhibit 2 hereto.
20

21 89. As indicated in Exhibit 2, in connection with their evaluation and
22 ultimate purchase of the Certificates, and as part of the due diligence they conducted
23 prior to such purchases, Plaintiffs received, considered and employed extensive
24 Supplemental Data concerning: (1) the credit characteristics of the Underlying
25 Receivables for the applicable TCF Securitizations; (2) the credit characteristics and
26 performance (including, centrally, prepayment and CNL information) of auto loans
27
28

1 previously originated and serviced by Gateway, including “static pool” information
2 concerning such loans as grouped by quarter of origination (and/or by month of
3 origination), both as a whole and disaggregated by Gateway internal credit
4 tier/program; and (3) the performance of prior TCF securitizations and of their
5 Underlying Receivables.
6

7
8 90. Notably, the central and largest part of the Supplemental Data provided
9 to Plaintiffs consisted of CNL information for loans previously originated and
10 serviced by Gateway – displayed on a “static pool” basis that grouped Gateway
11 loans by quarterly or monthly vintage of origination, reporting CNL for such static
12 loan pools throughout their lives, both on an overall pool basis and, within each
13 pool, as disaggregated by Gateway internal credit tier/program.
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16
17 91. The CNL information provided with the Supplemental Data was
18 material to Plaintiffs, as further detailed in Section III below, and was materially
19 false or misleading, as further detailed in Section IV below.
20

21 **III. REPORTED CNL IS MATERIAL TO CERTIFICATE INVESTORS**

22

23 92. Reported CNL is *a priori* material to ABS investors generally, and to
24 Certificate investors such as Plaintiffs particularly, because, *inter alia* and as
25 detailed below in Sections III.A-D:
26
27
28

1 a. it is a central and fundamental input into ABS investor
2 evaluation, valuation and pricing of ABS notes and certificates, and was so for
3 Plaintiffs' evaluation, valuation and pricing of the Certificates here;

4
5 b. it, for that reason, is extensively disclosed in ABS offering
6 documents and supplemental data generally, and in the TCF Securitizations'
7 Offering Documents and Supplemental Data here;

8
9 c. it, for the same reason, is the subject of "risk factor" disclosures
10 in ABS offering documents generally, and in the TCF Securitizations' Offering
11 Documents here;

12
13 d. the structure of ABS securitizations generally, and of the TCF
14 Securitizations here, leaves certificates and certificate investors generally, and the
15 Certificates and Plaintiffs here, most exposed to increases in CNL, which reduce on
16 a dollar for dollar basis the cashflows and returns on certificates generally, and on
17 the Certificates here.

18
19 93. Furthermore, as detailed below in Section III.E, where
20 Repo/Remarketing Expenses are passed on to ABS securitization trusts and
21 investors, they form a material portion of total CNL (typically, 15%-20%), and
22 hence are typically included in reported CNL. Gateway's omission of
23 Repo/Remarketing Expenses from Reported CNL is an illogical, inexplicable,
24 inappropriate and material departure from industry standards.
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94. Additionally, and as separately detailed in Section V, *infra*, Moody's various reactions to its December 2016 discovery of Gateway's omission of Repo/Remarketing Expenses from Reported CNL – namely: (1) prompting Gateway to provide the requisite disclosure in offering documents for a then-pending Gateway-sponsored ABS securitization; (2) requiring Gateway to restructure its then-pending auto ABS securitization so as to nearly quadruple the size of the securitization's reserve fund (from 25 basis points to 90 basis points) in order to provide such securitization's note investors with increased credit protection against Gateway's previously-omitted Repo/Remarketing Expenses; (3) downgrading credit ratings for prior Gateway-sponsored ABS securitizations in light of material increases to CNL estimates once Repo/Remarketing Expenses were added back in; and (4) initiating and publishing an industry-wide study of ABS sponsors' treatment of Repo/Remarketing Expenses and CNL reporting – all further demonstrate materiality *post facto*.

A. CNL is a Necessary, Fundamental and Crucial Data Point in ABS Evaluation, Valuation and Pricing

95. As explained below, all ABS investors (including Plaintiffs), as well as the credit rating agencies responsible for providing ABS credit ratings, utilize reported CNL as a central factor in evaluating, valuing and/or pricing ABS.⁵ Indeed,

⁵ The credit rating agencies' published methodologies for evaluating and rating auto loan provide a very detailed example of how ABS are evaluated, and of the fundamental, central and necessary role of reported CNL in any such

1 reported CNL is a necessary factor for the evaluation, valuation, and pricing of ABS:
2 ABS evaluation, valuation, and/or pricing cannot be accomplished without CNL
3 data. Consequently, reported CNL is highly material to ABS investors.
4

5 96. ABS cash flows, and hence value, derive directly from the performance
6 of the pooled assets underlying the ABS. However, the performance of such assets
7 (here, the Underlying Receivables) is not known at the outset of the ABS
8 securitization: most of the assets are newly-originated, and will continue to perform
9 (or not) over the course of the ensuing five to six years (the standard term for auto
10 loans). Therefore, ABS investors – as well as the credit rating agencies, who also
11 must evaluate ABS and their underlying assets at the outset of the ABS
12 securitization – have developed standard methods to evaluate the prospective
13 performance of ABS underlying assets (and, on the basis of such prospective
14 performance, evaluation of the ABS securities themselves) through sophisticated
15 analysis of extensive statistical data, including, as here, the CNL experienced by
16 previously-originated, similar loan pools.
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27 evaluation. See e.g. Yan Yan, Matias Langer and William Black, *Moody's Approach to Rating Auto Loan- and Lease-*
28 *Backed ABS*, Moody's Investors Service, Oct. 6, 2016 ("Moody's Methodology"); S&P Global Ratings, *ABS:*
General Methodology and Assumptions for Rating U.S. Auto Loan Securitizations, S&P Global Ratings, Jan. 11, 2011
(as updated in 2016 and 2017) ("S&P Methodology"). The methods Plaintiffs employed to evaluate the Underlying
Receivables here, and evaluate, value and price the Certificates, are substantially similar to those set forth in the
Moody's Methodology and the S&P Methodology, as set forth herein.

1 97. In evaluating ABS, ABS investors generally, Plaintiffs here
2 specifically, and the credit rating agencies, all employ a substantially similar three-
3 step methodology:
4

5 a. first, developing a “base case” view of the prospective
6 performance and cash flows of the securitization’s underlying assets, particularly
7 with respect to the extent of their CNL, the timing of such losses (loss curves), and
8 their voluntary prepayment rates, by
9
10

11 i. evaluating the credit characteristics of the pooled assets
12 underlying the instant securitization,
13

14 ii. analyzing the timing and extent of the losses, and
15 prepayments, experienced by previously-originated, similar loan pools, for which
16 actual performance data is available, and
17

18 iii. analyzing the manner(s) and extent to which such prior
19 loan pools differed from the instant pooled loans, in order to determine the extent to
20 which prospective loss/prepayment performance of the instant pool might differ
21 from historical pools;
22

23 b. second, projecting base case underlying asset cash flows, over
24 the life of the securitization, through the ABS securitization structure (*i.e.*, the
25 securitization’s priority of payments, or waterfall) and to the ABS securities
26 themselves, in order to envision and evaluate the prospective performance and
27
28

1 returns of the ABS securities (in such a base case view of underlying asset
2 performance); and
3

4 c. third, performing further projections of underlying asset cash
5 flows through the securitization structure, but utilizing a variety of alternative
6 “stress” scenarios – in which the extent and/or timing of losses and/or prepayments
7 is higher/worse than in the base case scenario – to evaluate the ABS securities’ risks,
8 performance and returns in such alternative scenarios.⁶
9
10

11 98. In the first and most fundamental of the above three steps, CNL (and
12 prepayment) data for prior, similar loan pools was considered and utilized in order
13 to generate a base case view of the prospective performance of the pooled loans
14 underlying the instant ABS securitization, based on evaluation of the manner and
15 extent of the differences between the historical and instant loan pools’ credit
16 qualities. To perform this analysis, ABS investors generally, and Plaintiffs, required
17 at least two different categories of data:
18
19
20

21 a. first, the credit characteristics of the assets underlying the instant
22 ABS securitization (*e.g.*, for auto loan ABS, among other things, the credit programs
23 or tiers under which the loans were originated or underwritten, the loans’ loan-to-
24 value (LTV) ratios, the loans’ interest rates, the loans’ terms, the FICO scores of the
25
26
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⁶ In addition to evaluating such downside scenarios to the “base case,” ABS investors (including Plaintiffs here) and the credit rating agencies also considered *upside* scenarios (*e.g.*, where Underlying Receivables performed better, and/or experienced lower CNL, than envisioned in the base case scenario).

1 loans' obligors, whether the autos were purchased new or used, the make of the
2 autos, the geographic distribution of the autos/obligors, etc.); and
3

4 b. second, extensive historical data concerning the performance of
5 the originator's *previously*-originated loans (or other pools of similar loans),
6 including particularly the timing and extent of such loans' CNL (as well as the
7 voluntary prepayments associated with such loans, which also can affect the
8 cashflows and valuations of ABS notes and ABS residuals), and the credit
9 characteristics of such loans.
10
11

12 99. The performance of such previously-originated loans, and the CNL
13 they experienced, provide prospective ABS investors, Plaintiffs, and the credit
14 rating agencies with *actual* performance/loss data from meaningfully-similar loans
15 (*e.g.*, loans originated by the same originator, using similar underwriting processes
16 and standards, to a similar population of obligors, serviced by the same servicer,
17 etc.). Additionally and/or alternatively, ABS investors, Plaintiffs, and the credit
18 rating agencies could, and did, also consider available historical performance data
19 on loan pools originated by different originators, but with otherwise similar credit
20 characteristics as the instant pooled loans.
21
22

23 100. ABS investors, Plaintiffs, and the credit rating agencies then applied
24 statistical techniques and analysis to evaluate the degrees of similarity and/or
25 divergence between (1) the loans underlying the instant ABS securitization, and (2)
26
27
28

1 the previously-originated loan pools for which historical performance, CNL and
2 prepayment data was provided. For example, the loans underlying the instant ABS
3 securitization might have better credit characteristics than prior loan pools,
4 indicating that their prospective CNL would be lower than those generated by prior
5 pools; or conversely, might have worse credit characteristics, thus indicating that
6 CNL would be higher than those prior loan pools experienced. Application of
7 statistical techniques and analysis can better specify the precise degrees of similarity
8 and/or divergence between the historical and instant loan pools, and hence provide
9 basis for more precise quantification of the extent to which prospective losses from
10 the instant loan pool might diverge (or not) from those associated with prior loan
11 pools.
12
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17 101. Details aside, the purpose and goal of the above-described ABS
18 evaluation methodology is simple: to develop a “base case” view of the prospective
19 performance generally, and of the CNL particularly, of the securitization’s
20 underlying assets. As an illustration, such a “base case” view could conclude that
21 the instant pool’s CNL would come to 2.5% of the pooled loans’ principal balance
22 – based on (1) reported CNL data for prior pooled loans (which yielded 2.0%
23 cumulative losses), and (2) the similarities/differences between the instant pool
24 loans and the prior loan pools (where the instant pooled loans presented poorer credit
25 characteristics than prior pools, and were thus likely to generate higher losses).
26
27
28

1 102. In the second of the above three steps, ABS investors, Plaintiffs, and
2 the credit rating agencies used the prospective, base-case performance, loss and
3 prepayment conclusions (*e.g.*, CNL of 2.5%; a prepayment speed of 1.5% per
4 month) as parameters to input into a model that tracked underlying asset cash flows
5 (according to the base case scenario parameters), over their entire term, **through the**
6 **securitization** (*i.e.*, employing the securitization's priority of payments, or cash
7 flow waterfall) and to the ABS securities themselves (*i.e.*, the Notes and
8 Certificates), yielding a base case view of the performance/returns of the ABS
9 securities themselves.
10
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14 103. In so doing, ABS investors, Plaintiffs, and the credit rating agencies
15 used sophisticated cash-flow modeling systems, either proprietary (in the case of the
16 credit rating agencies) or developed by specialized third-party vendors (such as
17 Intex, used by many/most ABS investors, including Plaintiffs). Intex, for example,
18 provides and maintains cash flow models that follow the priority of payment
19 structures set forth in almost all ABS securitizations, and allows ABS investors to
20 track cashflows through such structures under a variety of user-defined performance
21 scenarios concerning underlying asset performance (such as the "stress" scenarios
22 discussed below).
23
24
25
26

27 104. In the third of the above three steps, ABS investors, Plaintiffs, and the
28 credit rating agencies tracked cash flows through the ABS securitization under

1 multiple “stress” scenarios that assumed, for example, loss or prepayment
2 performance *worse* than that provided in the base case (for example, CNL at 3.0%,
3 or 3.3%, rather than the 2.5% base case; or prepayments running at a 1.75% speed,
4 rather than the 1.5% base case). Such stress testing allowed ABS investors,
5 Plaintiffs and the credit rating agencies insight into the extent of the risks to the ABS
6 securities and to their returns (*e.g.*, how were returns affected if CNL for the
7 underlying assets were 3.3%, rather than 2.5%?). Often, one component of such
8 stress testing was a “break even” analysis that determined the highest level of
9 underlying asset CNL that the securitization could stand before ABS investors
10 would experience losses (*i.e.*, the level of CNL at which ABS investors would
11 “break even.”).

12
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17 105. The purpose of the foregoing paragraphs is not to provide a complete
18 description of all the details involved in ABS evaluation, valuation and pricing (for
19 that, *see e.g.* the Moody’s Methodology and the S&P Methodology), but rather to
20 provide general understanding of the basic steps involved in such evaluation, and to
21 indicate the critical role of CNL in such evaluation. As set forth above, CNL was
22 both:
23
24

25
26 a. a critical and absolutely necessary input in ABS evaluation, in
27 the form of reported CNL for *prior* asset pools; and
28

1 b. the most fundamental goal of the ABS evaluation, insofar as
2 ABS evaluation required and depended on estimating CNL for the *instant*
3 underlying assets (based, as set forth above, on the credit qualities of such assets
4 and the CNL reported for *prior* pooled assets).

5
6
7 **B. For the Above Reasons, CNL Data is Typically Reported by ABS**
8 **Securitization Sponsors in Securitization Offering Documents,**
9 **and Provided as Supplemental Data to Prospective Investors**

10 106. As a result of the foregoing, ABS sponsors (such as and including
11 Gateway) typically report extensive historical CNL data in ABS securitization
12 offering documents (as Defendants did here in the Offering Documents), as well as
13 in supplemental data provided to prospective ABS investors (as Defendants did here
14 with the Supplemental Data).

15
16
17 107. The Offering Documents here reported extensive CNL information.
18 *See* TCF 2014-1 Notes Preliminary OM at S51-S53 and S67-S74; TCF 2014-1
19 Notes OM at S50-S52 and S66-S73; TCF 2015-1 Notes Preliminary OM at S57-S59
20 and S78-S93; TCF 2015-1 Notes OM at S55-S57 and S76-S91; TCF 2015-DP1
21 Certificate PPM at 49-51 and 69-88; TCF 2015-2 Notes Preliminary OM at S56-
22 S58 and S78-S97; TCF 2015-2 Notes OM at S56-S58 and S78-S97; TCF 2016-DP1
23 Certificate PPM at 48-50 and 69-94; TCF 2016-1 Notes Preliminary OM at S56-
24 S58 and S78-S93; TCF 2016-1 Notes OM at S56-S58 and S78-S93.

1 108. Specifically, the CNL information in the Offering Documents reported
2 CNL (and other performance information, including prepayments and
3 delinquencies) for static loan pools originated by Gateway each fiscal quarter since
4 the first quarter of 2009 – *i.e.*, the pool of all auto loans Gateway originated in the
5 first quarter of 2009, the pool of all auto loans Gateway originated in the second
6 quarter of 2009, etc. *See* TCF 2014-1 Notes Preliminary OM at S67-S74; TCF
7 2014-1 Notes OM at S66-S73; TCF 2015-1 Notes Preliminary OM at S78-S93; TCF
8 2015-1 Notes OM at S76-S91; TCF 2015-DP1 Certificate PPM at 69-88; TCF 2015-
9 2 Notes Preliminary OM at S78-S97; TCF 2015-2 Notes OM at S78-S97; TCF 2016-
10 DP1 Certificate PPM at 69-94; TCF 2016-1 Notes Preliminary OM at S78-S93; TCF
11 2016-1 Notes OM at S78-S93. For each such static pool, the level of CNL (and
12 prepayments, and delinquencies) was reported on a monthly basis (*e.g.*, at month 1,
13 CNL of 0.00%; at month 2, 0.01%; at month 3, 0.02%, etc.). *Id.* In addition to
14 reporting CNL for each of these pools in the pool’s entirety (aggregate pool CNL),
15 the Offering Documents also disaggregated the CNL data by Gateway’s internal
16 credit tiers (Tiers 1, 2 and 3) to report the particular CNL associated with the Tier 1
17 loans in each pool, the Tier 2 loans in each pool and the Tier 3 loans in each pool.
18
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26 109. Furthermore, and for the reasons set forth in Section III.A above, the
27 Offering Documents also provided further information concerning the credit
28 characteristics of each such static loan pool, to be evaluated in conjunction with the

1 pool CNL data. *See* TCF 2014-1 Notes Preliminary OM at S53-S58; TCF 2014-1
2 Notes OM at S52-S57; TCF 2015-1 Notes Preliminary OM at S60-S65; TCF 2015-
3 1 Notes OM at S58-S63; TCF 2015-DP1 Certificate PPM at 51-56; TCF 2015-2
4 Notes Preliminary OM at S59-S64; TCF 2015-2 Notes OM at S59-S64; TCF 2016-
5 DP1 Certificate PPM at 51-56; TCF 2016-1 Notes Preliminary OM at S59-S64; TCF
6 Notes OM at S59-S64.

7
8
9
10 110. The Supplemental Data that Defendants provided to the Initial
11 Purchasers for distribution to prospective TCF Securitization investors, including
12 Plaintiffs, reproduced the above-detailed information reported in the Offering
13 Documents, but in more usable form for analysis (*e.g.*, as excel spreadsheet data).

14
15 111. In addition, the Supplemental Data contained additional CNL data not
16 included in the Offering Documents, including:

17
18 a. more particularized disaggregation of CNL reporting by
19 Gateway's various, more particular internal credit programs (termed, in descending
20 order of credit quality, Longest Drive, Hole in One, Double Eagle, Eagle, Birdie,
21 Bogie and PAR);⁷ and

22
23 b. CNL reporting for pools underlying Gateway's prior TCF
24 Securitizations.
25
26
27
28

⁷ Gateway's internal Tier 1 loans included loans generated through the Longest Drive, Hole in One and Double Eagle credit programs; Tier 2 loans included those from the Eagle and Birdie credit programs; and Tier 3 loans included those from the PAR and Bogie credit programs.

112. Such CNL data was provided in the Offering Documents and the Supplemental Data because it was material to investors, for the reasons set forth in Section III.A above.

C. The Offering Documents Repeatedly Warned that Losses from the Underlying Receivables Could Materially Diminish Certificate Returns and/or Cause Certificate Investors Material Losses

113. The Offering Documents repeatedly warned that Certificate returns were dependent on performance of the Underlying Receivables, and that losses from the Underlying Receivables would result in diminished returns and/or significant losses for the Certificates:

The subordination of the certificates is intended to increase the likelihood of timely payments of principal of and interest on the notes. Accordingly, holders of the certificates will bear the greatest risk of non-payment or underpayment. Payments on the certificates will be extremely sensitive to losses on the receivables and the timing of payments on the receivables because if collections are lower than expected, the amount available for payment to certificateholders will be diminished.

Finally, there is no credit enhancement for the certificates. Any diminution in cash flow on the receivables and other assets of the issuing entity due to losses, prepayments or other reasons described herein will diminish amounts that would have been available for distributions on the certificates and may cause holders of the certificates to experience significant losses on their investment.

See TCF 2014-1 Certificate PPM at 6; TCF 2015-1 Certificate PPM at 6; TCF 2015-DP1 Certificate PPM at 11; TCF 2015-2 Certificate PPM, at 6; TCF 2016-DP1

1 Certificate PPM, at 11; TCF 2016-1 Certificate PPM, at 6 (underline added for
2 emphasis).

3
4
5 Investors are urged to make their investment decisions
6 based on their determinations as to anticipated rates of
7 cash flows and losses under a variety of scenarios.
8 Investors in the certificates should fully consider the risk
9 that losses on the receivables could result in the failure of
10 those investors to fully recover their investments.

11 See TCF 2014-1 Certificate PPM at 15; TCF 2015-1 Certificate PPM at 15; TCF
12 2015-DP1 Certificate PPM at 45; TCF 2015-2 Certificate PPM, at 15; TCF 2016-
13 DP1 Certificate PPM, at 45; TCF 2016-1 Certificate PPM, at 15 (underline added
14 for emphasis).

15
16 114. Hence, the Offering Documents themselves asserted/warned CNL was
17 material.

18
19 **D. ABS Structure Makes Certificate Returns Extremely Sensitive to**
20 **Underlying Receivables' CNL**

21 115. ABS structure generally, and the structure of the TCF Securitizations
22 here, make certificate returns extremely sensitive to underlying asset performance
23 and losses, for two reasons.

24
25 116. First, the residual interest cashflows that flow to certificate investors,
26 in ABS securitizations generally and in the TCF Securitizations here specifically,
27 are subordinated to all other disclosed securitization payment obligations (*i.e.*,
28 paying interest and principal on the notes, and paying fees and expenses to

1 transaction parties). Consequently, any diminution in the cash flows from a
2 securitization's underlying assets affects, first, the residual cashflows available to
3 certificate investors, and reduces such cash flows on a dollar for dollar basis.

5 117. Second, the structural leverage inherent in the structure of ABS
6 securitizations (for Certificateholders here, approximately 10 to 1 or more in the
7 TCF Securitizations) means that even a small rise in underlying assets' CNL has
8 substantial consequences for certificate risk, returns and value. For example, in the
9 TCF Securitizations, when Underlying Receivables' CNL rise from approximately
10 2.5% to approximately 4.0%, Certificate returns drop from above 10% per annum
11 to zero – and should losses increase further, Certificateholders suffer substantial
12 and/or near-total losses on their investments.

14 118. Indeed, the Offering Documents repeatedly warned that, due to such
15 subordination and leverage, Certificate returns were “extremely sensitive to losses
16 on the receivables:”

17
18
19
20
21 The subordination of the certificates is intended to
22 increase the likelihood of timely payments of principal of
23 and interest on the notes. Accordingly, holders of the
24 certificates will bear the greatest risk of non-payment or
25 underpayment. Payments on the certificates will be
26 extremely sensitive to losses on the receivables and the
27 timing of payments on the receivables because if
28 collections are lower than expected, the amount available
for payment to certificateholders will be diminished.

Finally, there is no credit enhancement for the certificates.
Any diminution in cash flow on the receivables and other

1 assets of the issuing entity due to losses, prepayments or
2 other reasons described herein will diminish amounts that
3 would have been available for distributions on the
4 certificates and may cause holders of the certificates to
5 experience significant losses on their investment.

6 *See* TCF 2014-1 Certificate PPM at 6; TCF 2015-1 Certificate PPM at 6; TCF 2015-
7 DP1 Certificate PPM at 11; TCF 2015-2 Certificate PPM, at 6; TCF 2016-DP1
8 Certificate PPM, at 11; TCF 2016-1 Certificate PPM, at 6 (underline added for
9 emphasis).
10

11 ***

12 [T]he yield on the certificates is extremely sensitive to
13 losses, prepayments and delinquencies on the receivables.
14

15 *See* TCF 2014-1 Certificate PPM at 14; TCF 2015-1 Certificate PPM at 14; TCF
16 2015-DP1 Certificate PPM at 42; TCF 2015-2 Certificate PPM, at 14; TCF 2016-
17 DP1 Certificate PPM, at 42; TCF 2016-1 Certificate PPM, at 14.
18
19

20 ***

21 Investors are urged to make their investment decisions
22 based on their determinations as to anticipated rates of
23 cash flows and losses under a variety of scenarios.
24 Investors in the certificates should fully consider the risk
25 that losses on the receivables could result in the failure of
26 those investors to fully recover their investments.

27 *See* TCF 2014-1 Certificate PPM at 15; TCF 2015-1 Certificate PPM at 15; TCF
28 2015-DP1 Certificate PPM at 45; TCF 2015-2 Certificate PPM, at 15; TCF 2016-

1 DP1 Certificate PPM, at 45; TCF 2016-1 Certificate PPM, at 15 (underline added
2 for emphasis).

3
4 119. Hence, Reported CNL, which was a necessary and critical input into
5 ABS investors' and Plaintiffs' evaluations of the Underlying Receivables' CNL,
6 was material.
7

8 **E. ABS Industry Standards Call for Repo/Remarketing Expenses,**
9 **When Passed on to ABS Securitizations and their Investors,**
10 **to be Included in Reported CNL, Where They Form a Material**
11 **Portion of Total CNL**

12 120. When Repo/Remarketing Expenses are passed on to ABS
13 securitizations and thus ABS investors, such expenses (1) are typically included in
14 the CNL figures reported in ABS offering documents and/or supplementary data,
15 and (2) typically amount to approximately 15%-20% of reported CNL.
16

17 **1. Where Repo/Remarketing Expenses are Passed on**
18 **to ABS Securitizations and ABS Investors, They Are**
19 **Typically Included in Reported CNL**

20 121. Defendants' treatment of Repo/Remarketing Expenses in their CNL
21 reporting is in clear violation of industry standards.
22

23 122. Following Moody's December 2016 discovery that Defendants did not
24 include Repo/Remarketing Expenses in Gateway's Reported CNL, yet still passed
25 on Repo/Remarketing Expenses to ABS securitizations and ABS investors,
26 Moody's decided to study how auto ABS sponsors treated and reported
27 Repo/Remarketing Expenses. In doing so, Moody's queried the 28 programmatic
28

1 auto ABS sponsors whose auto ABS securities it rated, and published, the results of
2 its study in May 2017. *See* Anna Burns and Yan Yan, *Auto ABS – US: Issuers’*
3 *Calculations of Cumulative Net Loss May Vary*, Moody’s Investor’s Service, May
4 10, 2017 (the “Moody’s Study”).
5

6
7 123. The Moody’s Study indicated clear industry standards with respect to
8 Repo/Remarketing Expenses and CNL reporting, and that Defendants’ here-detailed
9 conduct violated such standards.
10

11 124. First, the Moody’s Study found that most ABS sponsors (19 of 28)
12 included Repo/Remarketing Expenses as part of reported CNL, and that all such
13 sponsors passed on those Repo/Remarketing Expenses to ABS
14 securitizations/investors. *See* Moody’s Study at 1-2.
15
16

17 125. Second, the Moody’s Study found that, where ABS sponsors did not
18 include Repo/Remarketing Expenses as part of reported CNL, this was largely
19 because such ABS sponsors (six of the remaining nine) *assumed those expenses*
20 *themselves* rather than passing them on to ABS securitizations/investors. *See*
21 Moody’s Study at 2-3.
22

23
24 126. Thus, the clear industry standard revealed by the Moody’s Study is that:
25

26 a. where Repo/Remarketing Expenses are passed on to ABS
27 securitizations/investors, they are included in reported CNL; and
28

1 b. where Repo/Remarketing Expenses are not passed on to ABS
2 securitizations/investors, and instead borne by the sponsor/servicer, they are not
3 included in reported CNL.
4

5 127. The above-expressed standard with respect to treatment/reporting of
6 Repo/Remarketing Expenses is not merely consistent, but logical. Where
7 Repo/Remarketing Expenses affect ABS investors' returns (because the servicer
8 recoups such expenses from securitization cashflows, thereby reducing available
9 residual cashflows to certificate investors), they are included in reported CNL.
10 Where Repo/Remarketing Expenses do not affect ABS investors' returns (because
11 the servicer bears such costs rather than passing them on), they are not included in
12 reported CNL. **The loss reporting in both instances is thus appropriate under**
13 **the respective circumstances**, as in both instances CNL is presented as the
14 aggregate, cumulative losses generated from the underlying assets that flow to the
15 ABS securitizations and to ABS investors.
16

17 128. Gateway, however, is one of only three auto ABS sponsors that does
18 not comply with the above-indicated industry standards (the other two ABS
19 sponsors Fifth Third and California Republic). For the reasons stated immediately
20 below, Gateway is by far the worst abuser of the three.
21

22 129. Gateway, like most ABS sponsors, passes on Repo/Remarketing
23 Expenses to ABS securitizations and their investors. However, departing from
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1 industry standard practice (and common sense), *Defendants do not include*
 2 *Repo/Remarketing Expenses in Gateway's Reported CNL*, thus opening an
 3 unusual and illogical disjuncture between (1) Reported CNL, and (2) the CNL
 4 generated from the Underlying Receivables that flow to the TCF Securitizations and
 5 their investors, including, principally, Certificate investors such as Plaintiffs.
 6

7
 8 130. Although Fifth Third treats Repo/Remarketing Expenses in similar
 9 fashion, its behavior is effectively immaterial because, in the auto loan ABS it
 10 sponsors, Fifth Third only offers notes with triple-A credit ratings for sale to other
 11 ABS investors, and *retains for itself* all remaining securitization interests/risks
 12 below the triple-A level (*i.e.*, in effect, what in other ABS securitizations would
 13 constitute double-A, single-A and triple-B rated notes, and certificates). Because
 14 such Repo/Remarketing Expenses would first operate to diminish certificate returns,
 15 and in more extreme cases potentially diminish the returns of lower-rated notes,
 16 there is effectively no scenario in which treatment of Repo/Remarketing Expenses
 17 (either inclusion or exclusion) would have any effect on triple-A rated notes.⁸
 18
 19
 20
 21
 22

23 Consequently, although Fifth Third treats Repo/Remarketing Expenses similarly to
 24
 25

26 ⁸ Practical demonstration of this fact can be seen in the Moody's Announcement of December 14, 2016 (discussed
 27 below at Section V.C), where Moody's, among other things, downgraded the two junior-most classes of TCF 2016-
 28 1 Notes, but maintained the triple-A ratings for TCF 2016-1's senior-most Class A Notes, following its discovery that
 Gateway's Reported CNL had not included Repo/Remarketing Expenses. As Moody's explained in the Moody's
 Announcement, the triple-A ratings on the senior Notes were maintained, even as more junior Note class ratings were
 cut, because the increased losses had no realistic impact on the triple-A rated Class A Notes. *See* Moody's
 Announcement, at 2.

1 Defendants, no external ABS investors are affected or harmed by Fifth Third's
2 reporting. Put simply, Fifth Third "eats its own cooking" – the only entity affected
3 by Fifth Third's inconsistent treatment/reporting is Fifth Third itself, and it is
4 inherently aware of the inconsistent treatment/reporting.
5

6
7 131. California Republic, like Defendants, also passes on certain
8 Repo/Remarketing Expenses to the ABS securitizations it sponsors, yet excludes
9 such expenses from its reported CNL. However, California Republic's inconsistent
10 treatment/reporting of CNL was substantially more limited than Defendants', in
11 both kind and amount. First, where Defendants omitted both repossession expenses
12 and remarketing expenses from its historical CNL reporting, California Republic
13 omitted *only one* of these two expense categories from historical CNL reporting
14 (specifically, repossession expenses). *See* Moody's Study, at 3. Second and
15 relatedly, *the magnitude of the omitted expenses in California Republic-sponsored*
16 *ABS is far lower than in Defendants' TCF Securitizations (e.g., less than 5% of*
17 *reported CNL for California Republic, versus 15%-20% or more for Gateway).*⁹ For
18 both the above reasons, California Republic's inconsistent treatment of
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25 ⁹ Following the Moody's Announcement, California Republic revised its CNL reporting and its auto loan ABS
26 offering document disclosures to clearly indicate the amount of additional repossession expenses experienced by its
27 loan pools in addition to reported CNL for such pools. *See e.g.* preliminary prospectus dated February 3, 2017 for
28 California Republic Auto Receivables Trust 2017-1 ("CRB 2017-1 PPM"), at pp. A3-A4 (showing one column for
CNL for prior static loan pools, and another column for additional repossession expenses). For example, for
California Republic's 2012-1 auto loan ABS, reported CNL stood at 2.28% by month 49, while additional
repossession expenses amounted cumulatively at that time to only 0.10% – indicating that omitted repossession
expenses amounted to 4.4% of reported CNL. *Id.* at A4. Prior to the Moody's Announcement, offering documents
for California Republic auto ABS did not include the latter column for additional repossession expenses or otherwise
disclose the existence or amount of such additional repossession expenses.

1 Repo/Remarketing Expenses and reporting of CNL is *less material* to investors in
 2 California Republic-sponsored ABS than Defendants' treatment/reporting is to
 3 investors in the Gateway-sponsored TCF Securitizations, including, principally,
 4 Certificate investors such as Plaintiffs.
 5

6
 7 **2. Where Repo/Remarketing Expenses are Passed on**
 8 **to ABS Securitizations and ABS Investors, such Expenses**
 9 **Typically Constitute a Material Portion of Reported CNL**

10 132. Moody's estimates, based on discussions with auto loan securitization
 11 sponsors such as Gateway, that:

- 12 a. the average vehicle repossession cost is \$350;
- 13 b. the average remarketing cost is about \$400;
- 14 c. repossession cost, when included in CNL, leads to a 5%-10%
- 15 increase in CNL; and
- 16 d. Repo/Remarketing Expenses, when included in CNL, lead to an
- 17 approximately 20% increase in CNL.¹⁰
- 18
- 19
- 20

21 133. Consequently, exclusion of Repo/Remarketing Expenses from
 22 reported CNL where, as here, Repo/Remarketing Expenses are still passed through
 23 to the securitization trust and securitization investors, such as Plaintiffs, makes
 24 reported CNL materially lower (*e.g.*, 15%-20%) than the actual losses associated
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¹⁰ See Moody's Study at 3.

1 with the Underlying Receivables and incurred by the securitization trust (and
 2 securitization investors). *See* Moody's Study, at 2-3.

3
 4 134. Gateway-specific data are consistent with Moody's above-detailed
 5 general analysis. For example, and as detailed in Section V.C *infra*, in the case of
 6 TCF 2016-1, Repo/Remarketing Expenses were estimated to amount to 0.5% of
 7 TCF 2016-1's initial balance, and increased estimated CNL for TCF 2016-1 from
 8 3.0% (based on Reported CNL that excluded Repo/Remarketing Expenses) to 3.5%
 9 (a 16.7% increase).
 10
 11

12 **IV. DEFENDANTS' MATERIAL MISREPRESENTATIONS,** 13 **MISLEADING STATEMENTS AND OMISSIONS**

14
 15 135. Defendants' Offering Documents and Supplemental Data (identified in
 16 Sections II.C-D, *supra*, and Exhibit 2), and Defendants' direct communications with
 17 Plaintiffs, contained the below-specified material misrepresentations, materially
 18 misleading statements, and material omissions.
 19

20 **A. Defendants' Omission to Disclose that Although Defendants** 21 **Passed on Repo/Remarketing Expenses to their ABS** 22 **Securitizations/Investors, Defendants' Reported CNL Excluded** 23 **Repo/Remarketing Expenses, Rendered such Reported CNL** 24 **False and/or Misleading**

25 **1. Omissions from the Offering Documents**

26 136. In the auto loan ABS securitizations that Gateway sponsored, including
 27 the TCF Securitizations, Gateway did not assume the Repo/Remarketing Expenses
 28 that it incurred in servicing the Underlying Receivables, but instead passed them on

1 to the ABS securitizations backed by such Underlying Receivables, and thus to such
2 securitizations' investors (in the first instance and most specifically, to such
3 securitizations' Certificate investors).
4

5 137. This practice is, as detailed above, standard in the auto loan ABS
6 industry. *See* Section III.E, *supra*.
7

8 138. However, where Repo/Remarketing Expenses are borne by ABS
9 investors, rather than the ABS sponsor, it is also standard practice, as detailed below,
10 to report CNL figures **that include such expenses**. *See* Section III.E, *supra*. This
11 standard practice operates to ensure that the basis for the CNL reported by the ABS
12 sponsor matches the basis for the CNL experienced by ABS investors.
13
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15 139. Defendants, however, reported CNL in contravention of such industry
16 standards. The Reported CNL that Defendants provided and caused to be included
17 in the Offering Documents and Supplemental Data did not include
18 Repo/Remarketing Expenses, notwithstanding that Defendants passed on such
19 expenses to Gateway-sponsored securitizations and their investors, including
20 Plaintiffs.
21
22

23 140. Defendants provided and caused the Offering Documents and
24 Supplemental Data to include extensive Reported CNL figures presenting the
25 purported CNL experience of previously-originated Gateway auto loans, on both a
26 "Managed Pool" and "Static Pool" basis. The presentation of such Reported CNL
27
28

1 occupied a substantial portion of the Offering Documents. *See* TCF 2014-1 Notes
2 Preliminary OM at S51-S53 and S67-S74; TCF 2014-1 Notes OM at S50-S52 and
3 S66-S73; TCF 2015-1 Notes Preliminary OM at S57-S59 and S78-S93; TCF 2015-
4 1 Notes OM at S55-S57 and S76-S91; TCF 2015-DP1 Certificate PPM at 49-51 and
5 69-88; TCF 2015-2 Notes Preliminary OM at S56-S58 and S78-S97; TCF 2015-2
6 Notes OM at S56-S58 and S78-S97; TCF 2016-DP1 Certificate PPM at 48-50 and
7 69-94; TCF 2016-1 Notes Preliminary OM at S56-S58 and S78-S93; TCF 2016-1
8 Notes OM at S56-S58 and S78-S93.

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12
13 a. As presented on a “Managed Pool” basis, the Offering
14 Documents provided Reported CNL, as of calendar year end for each of the most
15 recent five calendar years, for Gateway’s entire portfolio of originated auto loans,
16 as well for the most recently fiscal quarter for which data was available (and the
17 year-ago quarter for comparison). *See* TCF 2014-1 Notes Preliminary OM at S51-
18 S53; TCF 2014-1 Notes OM at S-50-52; TCF 2015-1 Notes Preliminary OM at S57-
19 S59; TCF 2015-1 Notes OM at S55-S57; TCF 2015-DP1 Certificate PPM at 49-51;
20 TCF 2015-2 Notes Preliminary OM at S56-S58; TCF 2015-2 Notes OM at S56-S58;
21 TCF 2016-DP1 Certificate PPM at 48-50; TCF 2016-1 Notes Preliminary OM at
22 S56-S58; TCF 2016-1 Notes OM at S56-S58.

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27 b. As presented on “Static Pool” basis, the Offering Documents
28 provided Reported CNL by:

1 i. disaggregating Gateway's previously-originated auto
2 loans into separate, "static" pools by quarterly vintage of origination (*e.g.*, all auto
3 loans Gateway originated in the first quarter of 2009, all in the second, etc.), from
4 the first quarter of 2009 to the most recently-completed fiscal quarter prior to each
5 respective TCF Securitization;
6

7 ii. providing Reported CNL levels, for each such quarterly
8 static loan pool, after each successive month of its life, and thereby indicating both
9 the extent and the timing of CNL in such loan pools (*e.g.*, at month 1, CNL of 0.00%;
10 at month 2, 0.01%; at month 3, 0.02%; at month 12, 0.50%; at month 18, 0.85%,
11 etc.); and
12

13 iii. further disaggregating such quarterly static loan pools into
14 Gateway's three credit tiers (Tiers 1, 2 and 3), and providing Reported CNL levels
15 by separate credit tiers within each pool, thereby showing CNL/performance
16 differentials by credit tier. *See* TCF 2014-1 Notes Preliminary OM at S67-S74; TCF
17 2014-1 Notes OM at S66-S73; TCF 2015-1 Notes Preliminary OM at S78-S93; TCF
18 2015-1 Notes OM at S76-S91; TCF 2015-DP1 Certificate PPM at 69-88; TCF 2015-
19 2 Notes Preliminary OM at S78-S97; TCF 2015-2 Notes OM at S78-S97; TCF 2016-
20 DP1 Certificate PPM at 69-94; TCF 2016-1 Notes Preliminary OM at S78-S93; TCF
21 2016-1 Notes OM at S78-S93.
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1 141. The Supplemental Data that Defendants provided to the Initial
2 Purchasers for distribution to prospective TCF Securitization investors, including
3 Plaintiffs:

4 a. reproduced the above-specified Reported CNL provided in the
5 Offering Documents, but in more usable form for analysis (*e.g.*, as excel spreadsheet
6 data); and
7

8 b. in addition, contained further, more granular static pool
9 Reported CNL data not included in the Offering Documents, including
10

11 i. more particularized disaggregation of Reported CNL by
12 Gateway's seven internal credit programs (termed, in descending order of credit
13 quality, Longest Drive, Hole in One, Double Eagle, Eagle, Birdie, Bogie and
14 PAR),¹¹ and
15

16 ii. CNL reporting for pools underlying Gateway's prior TCF
17 securitizations.
18

19 142. The Offering Documents and Supplemental Data omitted, and nowhere
20 disclosed, that the above-specified Reported CNL figures did not include
21 Repo/Remarketing Expenses.
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¹¹ Gateway's internal Tier 1 loans included loans generated through the Longest Drive, Hole in One and Double Eagle credit programs; Tier 2 loans included those from the Eagle and Birdie credit programs; and Tier 3 loans included those from the PAR and Bogie credit programs.

1 143. Defendants' exclusion of Repo/Remarketing Expenses from Reported
2 CNL was, at all times until December 2016, known and knowable only to
3 Defendants (as alleged in further detail in ¶¶ 230-40, *infra*).

4
5 144. Defendants' CNL reporting created a mismatch between the basis of
6 the CNL Defendants reported (*i.e.*, Reported CNL, which excluded
7 Repo/Remarketing Expenses) and the basis for the CNL that investors in Gateway-
8 sponsored ABS effectively experienced (*i.e.*, Experienced CNL, which included
9 Repo/Remarketing Expenses). Defendants' Reported CNL for Gateway loan pools,
10 by excluding Repo/Remarketing Expenses, under-reported the CNL that investors
11 would actually experience in ABS securitizations backed by such loan pools, which
12 included Repo/Remarketing Expenses associated with such pools (Experienced
13 CNL).

14
15 145. Such under-reporting, as detailed in Section III.E.2, *supra*, was
16 material.

17
18 146. Defendants' omission from the Offering Documents and Supplemental
19 Data of the fact that Reported CNL excluded Repo/Remarketing Expenses meant
20 that TCF Securitization investors, including Plaintiffs, were unaware of the material
21 mismatch between the CNL reported by Defendants for Gateway loan pools
22 (Reported CNL, which did not include Repo/Remarketing Expenses) and the CNL
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1 that ABS investors would actually experience in connection with the same loan
2 pools (Experienced CNL, which included Repo/Remarketing Expenses).
3

4 147. Such omission rendered the Reported CNL in the Offering Documents
5 and Supplemental Data materially misleading and/or false. ABS investors such as
6 Plaintiffs, who relied on the Reported CNL figures to evaluate the prospective CNL
7 of the TCF Securitizations' Underlying Receivables, and to value and price the
8 Certificates, were materially misled by such Reported CNL that Defendants
9 included in the Offering Documents and Supplemental Data, which caused Plaintiffs
10 to miscalculate (and more specifically, underestimate) the prospective CNL that they
11 would experience in connection with the TCF Securitizations' Underlying
12 Receivables, and to mis-value and misprice the Certificates (and more specifically,
13 over-value and over-price the Certificates).
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18 **2. Omissions in Direct Communications with Plaintiffs**

19 148. In addition to Defendants' omission from the Offering Documents and
20 Supplemental Data of the fact that Reported CNL excluded Repo/Remarketing
21 Expenses, Defendants made further omissions of the same fact in each of their direct
22 communications with Plaintiffs (which direct communications are detailed below in
23 Section IV.E, *infra*).
24
25
26

27 149. In all such direct communications with Plaintiffs, Defendants
28 discussed, *inter alia*, Reported CNL. In all such direct communications,

1 Defendants, although discussing Reported CNL, omitted to disclose that Reported
2 CNL omitted Repo/Remarketing Expenses, notwithstanding that Defendants passed
3 on such expenses to Gateway-sponsored securitizations and their investors,
4 including Plaintiffs. Such omission was material and rendered Defendants'
5 discussion of and representations concerning Reported CNL materially misleading
6 and/or false.
7

8
9
10 **B. The Offering Documents Misrepresented that Repo/Remarketing**
11 **Expenses Were Included in Reported CNL**

12 150. Although the Offering Documents and Supplemental Data excluded
13 Repo/Remarketing Expenses from Reported CNL but omitted to so state (*see*
14 Section IV.A.1 immediately above), the Offering Documents also made affirmative
15 misrepresentations indicating that Repo/Remarketing Expenses had been included
16 in Reported CNL.
17

18
19 151. First, the Offering Documents for each of TCF Securitizations utilized
20 certain, and uniform, defined terms, and provided formal and uniform definitions
21 for such terms – including, in relevant part here, the terms “Cumulative Net Losses,”
22 “Aggregate Monthly Net Loss,” and “Liquidation Proceeds.” Specifically, the
23 Offering Documents defined:
24

25
26 a. “Cumulative Net Losses” as:

27
28 “Cumulative Net Losses” means, as of any payment date,
a fraction (expressed as a percentage), the numerator of
which is the Aggregate Monthly Net Losses experienced

on all Defaulted Receivables from the cut-off date through the last day of the related Collection Period and the denominator of which is the Initial Pool Balance.

See TCF 2014-1 Notes Preliminary OM at S-110; TCF 2014-1 Notes OM at S-109; TCF 2015-1 Notes Preliminary OM at S-128; TCF 2015-1 Notes OM at S-126; TCF 2015-DP1 Certificate PPM at 135; TCF 2015-2 Notes Preliminary OM at S-133; TCF 2015-2 Notes OM at S-133; TCF 2016-DP1 Certificate PPM at 135; TCF 2016-1 Notes Preliminary OM at S-129; TCF 2016-1 Notes OM at S-129.

b. “Aggregate Monthly Net Losses” as:

“Aggregate Monthly Net Loss” means, with respect to any payment date and the related Collection Period, an amount (which may be a positive or negative number) equal to (a) the aggregate amount financed immediately prior to becoming a Defaulted Receivable of each receivable newly designated as a Defaulted Receivable during that Collection Period minus (b) all Liquidation Proceeds collected during that Collection Period with respect to all Defaulted Receivables.

See TCF 2014-1 Notes Preliminary OM at S-109; TCF 2014-1 Notes OM at S-108; TCF 2015-1 Notes Preliminary OM at S-127; TCF 2015-1 Notes OM at S-125; TCF 2015-DP1 Certificate PPM at 134; TCF 2015-2 Notes Preliminary OM at S-132; TCF 2015-2 Notes OM at S-132; TCF 2016-DP1 Certificate PPM at 134; TCF 2016-1 Notes Preliminary OM at S-128; TCF 2016-1 Notes OM at S-128.

c. “Liquidation Proceeds” as:

1 “Liquidation Proceeds” means, with respect to a
2 Defaulted Receivable, all amounts realized with respect to
3 such receivable (including any amounts received by the
4 issuing entity in connection with the sale of any
5 Deficiency Balance) net of the liquidation expenses and
6 any amounts that are required to be refunded to the obligor
7 on such receivable, but in any event not less than zero.

8 *See* TCF 2014-1 Notes Preliminary OM at S-111; TCF 2014-1 Notes OM at S-110;
9 TCF 2015-1 Notes Preliminary OM at S-129; TCF 2015-1 Notes OM at S-127; TCF
10 2015-DP1 Certificate PPM at 136; TCF 2015-2 Notes Preliminary OM at S-134;
11 TCF 2015-2 Notes OM at S-134; TCF 2016-DP1 Certificate PPM at 136; TCF 2016-
12 1 Notes Preliminary OM at S-131; TCF 2016-1 Notes OM at S-131.

13
14 152. In other words, as such terms are used in the Offering Documents:

15 a. Cumulative Net Losses are simply the sum of Aggregate
16 Monthly Net Losses, divided by the initial principal amount of the Underlying
17 Receivables;
18

19 b. Aggregate Monthly Net Losses are the sum of the principal
20 outstanding on Underlying Receivables loans that defaulted during the month,
21 minus Liquidation Proceeds collected the same month from defaulted Underlying
22 Receivables loans; and
23

24 c. Liquidation Proceeds are the proceeds received after
25 repossessing and reselling (liquidating) the vehicles securing defaulted Underlying
26 Receivables “**net of the liquidation expenses**” (emphasis added).
27
28

1 153. The clear conclusion arising from reading such inter-related definitions
2 together, as is necessary given their inter-relations, is that, as presented and
3 discussed in the Offering Documents, Cumulative Net Losses included liquidation
4 recoveries “net of the liquidation expenses” – *i.e.*, net of Repo/Remarketing
5 Expenses. For the avoidance of doubt, such definitions communicated that
6 Cumulative Net Losses in the Offering Documents did not merely represent the
7 principal outstanding on defaulted loans minus (1) **gross** liquidation proceeds from
8 sale of the vehicles securing such loans, but rather minus (2) **net** liquidation
9 proceeds from sale of the vehicles securing such loans (*i.e.*, gross liquidation
10 proceeds minus “liquidation expenses,” meaning Repo/Remarketing Expenses).

15 154. Second, and to exactly the same effect, the Offering Documents for
16 each of TCF Securitizations, when presenting the Reported CNL figures on a
17 “Managed Pool” basis, utilized uniform footnotes purportedly explaining the basis
18 of the Reported CNL and other figures presented – including, in relevant part here
19 – the terms “Net Credit Loss,” “Gross Charge-Offs,” “Net Charge-Offs,” and
20 “Recoveries.” *See* TCF 2014-1 Notes Preliminary OM at S-52; TCF 2014-1 Notes
21 OM at S-51; TCF 2015-1 Notes Preliminary OM at S-59; TCF 2015-1 Notes OM at
22 S-57; TCF 2015-DP1 Certificate PPM at 50; TCF 2015-2 Notes Preliminary OM at
23 S-58; TCF 2015-2 Notes OM at S-58; TCF 2016-DP1 Certificate PPM at 50; TCF
24 2016-1 Notes Preliminary OM at S-58; TCF 2016-1 Notes OM at S-58.

Specifically, the Offering Documents represented that in such figures, “Recoveries” included “the net amounts received with respect to retail contracts previously charged off” (*i.e.*, liquidation proceeds net of, or minus, liquidation expenses – *i.e.*, Repo/Remarketing Expenses), and that “Net Charge Offs” (also termed “Net Credit Loss”) were simply Gross Charge-Offs minus such Recoveries. *Id.*

155. Again, and consistent with the prior set of definitions (§§ 151-52, *supra*), the clear conclusion arising from such explanatory footnotes was that “Net Credit Loss” and “Net Charge-Offs” were net of “Recoveries,” which themselves were presented on a “net” rather than gross basis (*i.e.*, net of recovery-related expenses – meaning Repo/Remarketing Expenses).

156. In sum, the above-identified statements in the Offering Documents misrepresented that Reported CNL figures contained therein were net of (*i.e.*, included, rather than excluded) Repo/Remarketing Expenses.

C. The Offering Documents’ Materially Misleading Sensitivity Analyses

157. Each of the Certificate PPMs included a “Sensitivity Analysis” purporting to indicate the Certificates’ prospective returns (yields), and demonstrate the sensitivity of such yields, in multiple “cases” defined principally by assuming varying levels of Underlying Receivables’ CNL. *See* TCF 2014-1 Certificate PPM at 14-15; TCF 2015-1 Certificate PPM at 14-15; TCF 2015-DP1 Certificate PPM at

42-45; TCF 2015-2 Certificate PPM at 14-15; TCF 2016-DP1 Certificate PPM at 42-45; TCF 2016-1 Certificate PPM at 14-15.

158. The “Sensitivity Analyses” included in the Certificate PPMs are reproduced in relevant part below:

Table 1
The Sensitivity Analyses

TCF 2014-1

	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
CNL (%)	1.80%	2.00%	2.20%	1.80%	2.00%	2.20%
ABS (Prepayment rate)	1.20%	1.20%	1.20%	1.40%	1.40%	1.40%
Certificate Yield to Maturity *	14.98%	13.28%	11.60%	10.53%	8.80%	7.09%

* assuming aggregate Certificates purchase price of \$14.725 million

TCF 2015-1

	Case 1	Case 2	Case 3
CNL (%)	2.60%	2.80%	3.00%
ABS (Prepayment rate)	1.40%	1.40%	1.40%
Certificate Yield to Maturity*	10.21%	8.60%	7.01%

* assuming aggregate Certificates purchase price of \$32.6 million

TCF 2015-DP1

	Case 1	Case 2	Case 3	Case 4	Case 5
CNL (%)	2.20%	2.30%	2.45%	2.60%	2.70%
ABS (Prepayment rate)	1.30%	1.30%	1.30%	1.30%	1.30%

Certificate Yield to Maturity *	10.43%	9.72%	8.66%	7.61%	6.91%
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* assuming aggregate Certificates purchase price of \$35.565 million

TCF 2015-2

	Case 1	Case 2	Case 3
CNL (%)	2.50%	2.75%	3.00%
ABS (Prepayment rate)	1.50%	1.50%	1.50%
Certificate Yield to Maturity*	11.49%	9.14%	6.84%

* assuming aggregate Certificates purchase price of \$16.05 million

TCF 2016-DP1

	Case 1	Case 2	Case 3	Case 4	Case 5
CNL (%)	2.75%	2.60%	2.45%	2.30%	2.15%
ABS (Prepayment rate)	1.40%	1.40%	1.40%	1.40%	1.40%
Certificate Yield to Maturity *	9.56%	11.56%	13.57%	15.60%	17.63%

* assuming aggregate Certificates purchase price of \$22.682 million

TCF 2016-1

	Case 1	Case 2	Case 3	Case 4
CNL (%)	2.40%	2.55%	2.70%	2.85%
ABS (Prepayment rate)	1.45%	1.45%	1.45%	1.45%
Certificate Yield to Maturity *	14.79%	13.23%	11.68%	10.16%

* assuming aggregate Certificates purchase price of \$28.46 million

1 See TCF 2014-1 Certificate PPM at 14-15; TCF 2015-1 Certificate PPM at 14-15;
 2 TCF 2015-DP1 Certificate PPM at 42-45; TCF 2015-2 Certificate PPM at 14-15;
 3 TCF 2016-DP1 Certificate PPM at 42-45; TCF 2016-1 Certificate PPM at 14-15.
 4

5 159. The above-detailed “Sensitivity Analysis” representations in the
 6 Certificate PPMs were materially false and misleading, for the reasons set forth
 7 below.
 8

9 160. First and most fundamentally, the “Sensitivity Analyses” materially
 10 overstated prospective Certificate yields at all CNL levels by omitting the effect of
 11 Repo/Remarketing Expenses on Certificate yields (or, alternatively stated, by
 12 omitting to disclose that such CNL levels did not include Repo/Remarketing
 13 Expenses).
 14

15 161. This omission was material. Repo/Remarketing Expenses for the
 16 Underlying Receivables in the TCF Securitizations amounted to approximately
 17 0.50% of the Underlying Receivables’ initial balance.¹² As the Sensitivity Analyses
 18 themselves demonstrate, a 0.50% increase in Underlying Receivables’ CNL has
 19 dramatic effects on Certificate returns. For example, the TCF 2015-2 Sensitivity
 20 Analysis indicates that when CNL rises 0.50%, from 2.50% to 3.00%, Certificate
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 27
 28 ¹² As set forth in Section V.C, *infra*, this was revealed in December 2016 when, only months after TCF 2016-1’s closing date, Moody’s increased its CNL estimates for TCF 2016-1 from 3.0% to 3.5% after learning that Defendants’ Reported CNL had omitted Repo/Remarketing Expenses, and after adding back in such Repo/Remarketing Expenses. This 0.50% increase in CNL was due *solely* to re-integration of Repo/Remarketing Expenses, rather than to any other developments (*e.g.*, deteriorating economic conditions, deteriorating loan performance, etc.).

1 yields fall from 11.49% to 6.84%. Likewise, the TCF 2015-DP1 Sensitivity
2 Analysis indicates that when CNL rises 0.50%, from 2.20% to 2.70%, Certificate
3 yields fall from 10.43% to 6.91%. Indeed, a 0.50% rise in CNL is so material that
4 the Sensitivity Analyses for three of the six TCF Securitizations failed to even
5 contemplate it (the Sensitivity Analyses in the TCF 2014-1, TCF 2015-1 and TCF
6 2016-1 Certificate PPMs showed a maximum CNL increase of only 0.40%), while
7 the Sensitivity Analyses for two of the remaining three TCF Securitizations (TCF
8 2015-2, TCF 2015-DP1) featured as a *maximum* a 0.50% rise in CNL.
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12 162. Second, and as indicated by the yellow highlighting in Table 1 above,
13 among the multiple “cases” presented in the Sensitivity Analysis for each TCF
14 Securitization, with each “case” defined principally by differing levels of
15 Underlying Asset CNL, was an effective midpoint case, featuring a midpoint CNL.
16 Such cases and their midpoint CNLs are reproduced in Table 2 below:
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Table 2
The Sensitivity Analyses' Midpoint CNL Scenarios

	TCF 2014-1		TCF 2015-1	TCF 2015-DP1
	Case 2	Case 5	Case 2	Case 3
CNL (%)	2.00%	2.00%	2.80%	2.45%
ABS (Prepayment rate)	1.20%	1.40%	1.40%	1.30%
Certificate Yield to Maturity *	13.28%	8.80%	8.60%	8.66%

	TCF 2015-2	TCF 2016-DP1	TCF 2016-1	
	Case 2	Case 3	Case 2	Case 3
CNL (%)	2.75%	2.45%	2.55%	2.70%
ABS (Prepayment rate)	1.50%	1.40%	1.45%	1.45%
Certificate Yield to Maturity *	9.14%	13.57%	13.23%	11.68%

163. The midpoint cases/CNL in the Sensitivity Analyses were meant to communicate, and functioned as, Defendants' *de facto* "guidance" for "base case" performance of the Underlying Receivables – and, hence, of the Certificates. Such guidance was materially false and misleading, for the same reasons set forth in ¶¶ 160-61 above.

164. For the avoidance of doubt, such guidance is not alleged to have been materially false and misleading because it proffered a more favorable view of Underlying Receivables' performance, defaults and CNL than later materialized.

1 Even in the event that actual Underlying Receivables performance materialized to
 2 match Defendants' guidance, the represented Certificate yields materially
 3 overstated the yields that Plaintiffs and other Certificate investors would experience,
 4 because the Sensitivity Analyses omitted the effect of Repo/Remarketing Expenses
 5 on Certificate yields (or, alternatively stated, omitted to disclose that the Reported
 6 CNL levels did not include Repo/Remarketing Expenses).

10 165. As set forth in Sections III.A, *supra*, and VIII.A, *infra*, Plaintiffs
 11 formed their own "base case" views concerning prospective Underlying Receivables
 12 performance and Certificate returns. However, in addition to forming their own
 13 views based on their own analyses and evaluations, Plaintiffs also considered, *inter*
 14 *alia*, Defendants' guidance.

17 **D. The Offering Documents' Misrepresentations and Omissions**
 18 **Concerning Gateway's Compensation from TCF Securitizations**

19 166. The Offering Documents represented that Gateway's compensation for
 20 serving as the TCF Securitizations' servicer, and for servicing the Underlying
 21 Receivables, would consist of two fee streams: the "Servicing Fee" and the
 22 "Supplemental Servicing Fees."¹³

27 ¹³ The Offering Documents also disclosed that Gateway would extract a third income stream, consisting of investment
 28 income from amounts on deposit in the collections accounts of the TCF Securitizations. Such "float income" – the
 interest earned on obligor loan payments, after such payments were deposited in the TCF Securitizations' collections
 accounts and before such funds were paid out to Noteholders, Transaction Parties and Certificateholders – was
 immaterial from the perspective of Certificateholders, as Gateway's taking of such float income did not diminish
 returns to Certificateholders.

1 167. First, as the TCF Securitization's servicer, Gateway was entitled to a
2 Servicing Fee, payable monthly at an annualized rate of 1.00% of the Underling
3 Receivables balance (as of the first day of each month). *See e.g.* TCF 2014-1
4 Certificate PPM at 2; TCF 2014-1 Preliminary Notes OM at S-5 and S-91; TCF
5 2014-1 Notes OM at S-5 and S-90; TCF 2015-1 Certificate PPM at 2; TCF 2015-1
6 Preliminary Notes OM at S-5 and S-108-09; TCF 2015-1 Notes OM at S-5 and S-
7 106-07; TCF 2015-2 Certificate PPM at 2; TCF 2015-2 Preliminary Notes OM at
8 S-5 and S-113; TCF 2015-2 Notes OM at S-5 and S-113; TCF 2015-DP1 Certificate
9 PPM at 4 and 104; TCF 2016-DP1 Certificate PPM at 4 and 100; TCF 2016-1
10 Certificate PPM at 2; TCF 2016-1 Preliminary Notes OM at S-5 and S-109; TCF
11 2016-1 Notes OM at S-5 and S-109.

12 168. Second, Gateway was also entitled to "Supplemental Servicing Fees."
13 *See id.* Such "Supplemental Servicing Fees" were defined in the Offering
14 Documents as follows:

15 "Supplemental Servicing Fees" means any late fees,
16 prepayment charges, extension fees and other
17 administrative fees and expenses or similar charges
18 allowed by applicable law collected (from whatever
19 source) on the receivables during each Collection Period
20 permitted to be retained by the servicer pursuant to the
21 servicing agreement.

22 *See* TCF 2014-1 Preliminary Notes OM at S-113; TCF 2014-1 Notes OM at S-112;
23 TCF 2015-1 Preliminary Notes OM at S-131; TCF 2015-1 Notes OM at S-129; TCF

1 2015-2 Preliminary Notes OM at S-136; TCF 2015-2 Notes OM at S-136; TCF
2 2015-DP1 Certificate PPM at 138; TCF 2016-DP1 Certificate PPM at 138; TCF
3 2016-1 Preliminary Notes OM at S-133; TCF 2016-1 Notes OM at S-133.

4
5 169. The Offering Documents also referred to such Supplemental Servicing
6 Fees as the “additional servicing compensation” payable to Gateway over and above
7 the Servicing Fee:
8

9
10 The servicing fee paid to the servicer on each payment
11 date is equal to the product of one-twelfth of 1.00% per
12 annum and the Pool Balance as of the first day of the
13 related Collection Period. *The servicer is also entitled to*
14 *retain late fees, prepayment charges, extension fees and*
15 *other administrative fees and expenses or similar charges*
collected on the receivables as additional servicing
compensation.

16 *See* TCF 2014-1 Preliminary Notes OM at S-5; TCF 2014-1 Notes OM at S-5; TCF
17 2015-1 Preliminary Notes OM at S-5; TCF 2015-1 Notes OM at S-5; TCF 2015-2
18 Preliminary Notes OM at S-5; TCF 2015-2 Notes OM at S-5; TCF 2015-DP1
19 Certificate PPM at 4; TCF 2016-DP1 Certificate PPM at 4; TCF 2016-1 Preliminary
20 Notes OM at S-5; TCF 2016-1 Notes OM at S-5 (emphasis added).
21

22
23 170. The above-identified representations concerning Gateway’s
24 compensation from the TCF Securitizations’ cashflows were materially misleading
25 in and of themselves, as well as in conjunction with the above-detailed
26 representations in the Offering Documents concerning Reported CNL and
27
28

1 Repo/Remarketing Expenses (*see* Sections IV.A-B, *supra*), for the reasons set forth
2 below.

3
4 171. First, the above representations indicated that Gateway's compensation
5 was congruent with standard practice in the auto ABS industry, where servicers
6 typically received fees substantially similar to the above-described Servicing Fee
7 and Supplemental Servicing Fees (which latter fees consisted essentially of
8 *additional* fees charged to the Underlying Receivables' obligors ["late fees,
9 prepayment charges, extension fees and other administrative fees. . ."] over and
10 above such obligors' normal interest and principal obligations). Furthermore, when
11 read with the above-detailed representations in the Offering Documents concerning
12 Reported CNL and Repo/Remarketing Expenses, the above representations further
13 indicated that Repo/Remarketing Expenses were already integrated, as per standard
14 industry practice, into cumulative net less reporting (or alternatively, did nothing to
15 disclose that although such Repo/Remarketing Expenses had not been integrated
16 into Defendants' Reported CNL, Gateway would extract such Repo/Remarketing
17 Expenses from the TCF Securitizations' Underlying Receivables' cashflows).

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24 172. In other words, the above representations were false and/or misleading
25 because they omitted to disclose that Defendants, in violation of industry norms (*see*
26 Section III.E, *supra*), had omitted from Reported CNL one set of cashflows related
27 to the Underlying Receivables (*i.e.*, Repo/Remarketing Expenses), but would still
28

1 extract, from the Underlying Receivables' cashflows and as part of their
2 compensation, such Repo/Remarketing Expenses.
3

4 173. In effect, Defendants secretly re-classified Repo/Remarketing
5 Expenses from a CNL-related item to a compensation-related item, while omitting
6 to disclose either (1) that Repo/Remarketing Expenses had not been included in
7 Reported CNL, or (2) that Defendants would extract Repo/Remarketing Expenses
8 as part of their TCF Securitization compensation.
9
10

11 174. Second, the above representations concerning Gateway's TCF
12 Securitization compensation indicated, falsely and/or misleadingly, that the
13 compensation that Gateway would extract from the TCF Securitizations'
14 Underlying Receivables' cashflows would:
15
16

17 a. be limited to the 1.00% Servicing Fee and the Supplemental
18 Servicing Fees;
19

20 b. amount to little more than the 1.00% Servicing Fee, because the
21 Supplemental Servicing Fees ("late fees, prepayment charges, extension fees and
22 other administrative fees. . .") were relatively inconsequential; and
23

24 c. apart from the 1.00% Servicing Fee, do little or nothing to reduce
25 the stream of normal interest and principal cashflows generated from the TCF
26 Securitizations' Underlying Receivables that reached Certificateholders, because
27 the Supplemental Servicing Fees consisted entirely of *additional* fees charged to the
28

1 Underlying Receivables’ obligors (“late fees, prepayment charges, extension fees
2 and other administrative fees. . .”) over and above such obligors’ normal interest and
3 principal obligations.
4

5 175. The above representations were false and/or misleading because of
6 their omission to disclose that Gateway would also extract Repo/Remarketing
7 Expenses from the TCF Securitizations’ Underlying Receivables’ cashflows.
8 Unlike the Supplemental Servicing Fees disclosed in the Offering Documents,
9 Repo/Remarketing Expenses (1) are substantial, and (2) when extracted by
10 Defendants, materially reduce the Underlying Receivables’ cashflows that flow to
11 Certificate investors.
12
13
14

15 176. And when read in conjunction with the above-detailed representations
16 in the Offering Documents concerning Reported CNL and Repo/Remarketing
17 Expenses, the above representations concerning Defendants’ TCF Securitization
18 compensation were false and misleading for the reasons set forth in ¶¶ 152-56,
19 *supra*. While Defendants in effect, but secretly, re-classified Repo/Remarketing
20 Expenses from a CNL-related item to a compensation-related item, Defendants
21 omitted to disclose either (1) that Reported CNL did not include Repo/Remarketing
22 Expenses, or (2) that Gateway would extract Repo/Remarketing Expenses as part of
23 its TCF Securitization compensation.
24
25
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1 177. The above-detailed representations and omissions concerning
2 Gateway's compensation from the TCF Securitizations were material.
3

4 178. Gateway's compensation for serving as the TCF Securitizations'
5 servicer, and for servicing the Underlying Receivables, was funded from the cash
6 flows generated by the Underlying Receivables. As a Transaction Party, Gateway's
7 claims to payment of its Servicing Fee were senior to Certificateholder claims (and
8 Noteholder claims) on the same cashflows, and Gateway's claims to payment of its
9 Supplemental Servicing Fees were likewise senior to Certificateholder claims
10 (although not Noteholder claims) on the same cashflows. As a result, every dollar
11 paid to Defendants as compensation from the TCF Securitizations and the cashflows
12 generated by their Underlying Receivables was a dollar that otherwise would have
13 flowed to Certificateholders.
14
15
16
17

18 179. Therefore, the compensation paid to Gateway from the cashflows
19 generated by the TCF Securitizations' Underlying Receivables were material to
20 Certificate investors, because such compensation reduced, on a dollar for dollar
21 basis, the returns of Certificate investors.
22
23

24 180. Additionally, Gateway's Repo/Remarketing Expenses, which
25 Defendants omitted from Reported CNL but extracted from the TCF
26 Securitizations' cashflows, were sufficiently sizeable as to be material, for the
27 reasons set forth in Section III.E.2, *supra*, and Section V, *infra*. Cumulative
28

1 Repo/Remarketing Expenses in each of the TCF Securitizations amounted to 0.50%
2 or more of the initial balance of the Underlying Receivables, and when integrated
3 into the Underlying Receivables' CNL constituted 15%-20% or more of such CNL.
4 As the Offering Documents themselves indicated (*see* Section IV.C, *supra*), a 0.50%
5 rise in CNL is highly material to Certificate investors' returns and materially
6 diminishes such returns.
7

8
9
10 181. Lastly, the above-detailed misrepresentations and omissions
11 concerning Gateway's compensation from the TCF Securitizations are consistent
12 with, and mutually reinforced, Defendants' materially misleading Sensitivity
13 Analyses (detailed in Section IV.C, *supra*). The TCF Securitization cashflow
14 modeling and Certificate return calculations that Defendants presented in the
15 Sensitivity Analyses were premised on modeling Gateway compensation cashflows
16 to consist solely of the 1.00% Servicing Fee (and *de minimis* further expenses
17 payable to other Transaction Parties, such as US Bank and Wilmington), and
18 omitted any cashflows relating to Repo/Remarketing Expenses.
19
20
21
22

23 **E. Defendants' Affirmative Misrepresentations, in Direct**
24 **Communications with Plaintiffs, Concerning Reported CNL**

25 182. In connection with the TCF Securitizations and with Plaintiffs'
26 investments in the Certificates, Plaintiffs communicated directly with Defendants
27 on multiple occasions, via telephone and/or through in-person meetings as well.
28

183. For example, GIC communicated directly with Defendants on the

following occasions:

Date	Communication Type	Plaintiffs' Participants	Defendants' Participants*	TCF Securitization	Topics of Communication
10/19-20/2015	meeting (Gateway offices in Anaheim, CA)	GIC (M.U.; D.L.; W.B.)	Brian MacInnis; David MacInnis; Todd Pierson; Brandon Pierson; Gerald Wilkins; Syd Libsack; Jennifer Ishiguro; Denise Sorells; Chelsea Feliciano	TCF 2015-2	Review of: Gateway loan origination and loan underwriting operations, policies and procedures; Gateway's loan servicing operations, policies and procedures (including Gateway's collections and recovery management operations, and Gateway's loan performance reporting); and Gateway loans' performance, including CNL
11/5/2015	phone	GIC (M.U.)	Brian MacInnis	TCF 2015-2	discussion, among other things, of Gateway CNL
11/10/2015	phone	GIC (M.U.)	Brian MacInnis	TCF 2015-2	discussion, among other things, of Gateway CNL
6/7/2016	meeting (GIC offices in NYC)	GIC (M.U.)	Sydney Libsack	TCF 2016-DP1	discussion, among other things, of Gateway CNL

8/22/2016	meeting (NYC dinner)	GIC (M.U.)	Brian MacInnis	TCF 2016-1	discussion, among other things, of Gateway CNL
10/25/2016	meeting (GIC offices in NYC)	GIC (M.U.)	Sidney Libsack		discussion, among other things, of Gateway CNL

* Brian MacInnis was Gateway's co-founder and served as Gateway's CEO through January 2017. David MacInnis was Gateway's co-founder and served as its President through January 2017. Sydney Libsack was a Gateway Senior Vice President from October 2012 to October 2017. As of October 2015, Todd Pierson served as Gateway's Chief Operating Officer, Brandon Pierson as Chief Risk Officer, Gerald Wilikins as Chief Financial Officer, Jennifer Ishiguro as Chief Legal Officer, Denise Sorrells as AVP Cash Manager, and Chelsea Feliciano as Investor Relations Manager.

184. In all of Plaintiffs' direct communications with Defendants, Reported CNL were discussed.

185. For example, prior to making any investments in auto loans originated by Defendants or auto ABS sponsored by Defendants, such as the TCF Securitizations, GIC:

- a. examined the performance record of Gateway-originated auto loans;
- b. compared it the performance of other originators' auto loans;
- c. observed that Gateway-originated loans' credit performance (including reported CNL) appeared superior to that of other originators; and
- d. determined that the apparent performance differential was not fully explained by differences in the loans' credit characteristics.
- e. consequently, before, during and after its October 19-20, 2015 visit to Gateway's headquarters, GIC explicitly questioned Defendants concerning

1 Gateway's Reported CNL, repeatedly raising the issue of this apparent performance
2 differential in discussions with Defendants, and repeatedly asking Defendants for
3 explanations as to its cause.
4

5 186. Defendants' constant and repeated answer to GIC's queries was that
6 Defendants were simply better at credit selection (when extending and/or funding
7 loans), and at loan servicing thereafter, than their peers – *inter alia*, by re-
8 underwriting every loan Gateway funded, and by aggressive servicing.
9
10

11 187. GIC believed Defendants' responses to provide reasonable qualitative
12 explanation for the apparent performance differential. Indeed, the apparently
13 superior performance of Defendants' auto loans formed one of the bases for GIC's
14 decision to begin investing in Defendant-sponsored auto loan securitizations such
15 as the TCF Securitizations, and to purchase the Certificates specifically.
16
17

18 188. Defendants' affirmative representations concerning Reported CNL, in
19 Defendants' direct communications with Plaintiffs, were materially false and
20 misleading.
21
22

23 189. For example, the apparently superior performance of Gateway-
24 originated loans, as indicated by Defendants' Reported CNL, was not due to
25 Defendants' superior credit selection abilities, as Defendants repeatedly represented
26 to Plaintiffs. Rather, as revealed by the Moody's Announcement in December 2016,
27 the loans' apparently superior performance was nothing more than an artefact of
28

1 Defendants' practice – undisclosed, and in contravention of industry standards – of
 2 omitting Repo/Remarketing Expenses from Reported CNL.
 3

4 **V. ADDITIONAL FACTS RELEVANT TO MATERIALITY:**
 5 **MOODY'S REACTIONS TO DEFENDANTS' CONDUCT**
 6 **FURTHER DEMONSTRATES MATERIALITY**

7 190. On December 14, 2016, Moody's announced that it had recently
 8 learned that Gateway's CNL, as reported at all times by Defendants, had not
 9 included Repo/Remarketing Expenses, notwithstanding that Defendants passed on
 10 such expenses to Gateway-sponsored securitizations and their investors. *See Anna*
 11 *Burns and JingJing Dang, Moody's Downgrades Auto Loan ABS Issued by TCF in*
 12 *2016*, Moody's Investor's Service, Dec. 14, 2016 (the "Moody's Announcement").
 13

14 191. Moody's reactions to this information further demonstrate its
 15 materiality.
 16

17 **A. Moody's Prompted Defendants to Provide the Requisite**
 18 **Disclosure in Pending/Future Auto Loan ABS Securitizations**
 19

20 192. At the time of the Moody's Announcement, Defendants were then
 21 sponsoring and marketing a new auto loan ABS securitization, TCF 2016-PT1, for
 22 which a certificate private placement memorandum and a notes preliminary offering
 23 memorandum supplement had already issued (dated, respectively, December 1 and
 24 December 8, 2016).
 25

26 193. On or about December 12, 2016 and/or December 14, 2016,
 27 Defendants issued subsequent and revised certificate private placement memoranda
 28

1 for the TCF 2016-PT1 certificates that contained two substantive, unusual and
2 related changes: (1) an added explicit disclosure in the “Risk Factors” section,
3 warning that Reported CNL did not include Repo/Remarketing Expenses (*see*
4 immediately below); and (2) a near-quadrupling of TCR 2016-PT1’s reserve
5 account, from 0.25% of the initial Underlying Receivables’ pool balance to 0.90%
6 (detailed next in Section V.B *infra*).
7
8

9
10 194. The new and explicit warning, added to the first “Risk Factor” listed in
11 the private placement memorandum, disclosed that the Reported CNL figures
12 included in the TCF 2016-PT1 offering documents excluded Repo/Remarketing
13 Expenses:
14

15
16 Gateway’s cumulative net loss experience set forth in the
17 tables included in “*Origination and Servicing of The*
18 *Receivables—Static Pool Information About Gateway’s*
19 *Total Managed Portfolio*” does not include expenses
20 incurred by Gateway in connection with the liquidation of
21 the related vehicles or certain other reimbursable
22 expenses. Such expenses are reimbursable to Gateway,
23 will not be included as available funds, and will reduce the
24 amounts available for distribution on the certificates and
25 may result in losses to the Certificateholders.
26

27
28 *See, e.g.,* December 14, 2016 TCF 2016-PT1 certificate private placement
memorandum, at 6-7.

195. The above-identified new disclosure was prompted by Moody's discovery that Reported CNL had not included Repo/Remarketing Expenses and by the related/impending Moody's Announcement.

B. Moody's Required Defendants to Restructure their Pending Auto Loan ABS Securitization, TCF 2016-PT1, with Materially Increased Credit Protection to Absorb the Previously-Omitted Repo/Remarketing Expenses

196. As set forth above (Section II.A, *supra*) and in Exhibit 1 (TCF Securitizations Summary), Gateway structured each of the TCF Securitizations to provide Notes investors with an additional layer of credit protection through the institution of a "reserve account." The funds in the reserve account served as an additional buffer against payment shortfalls to Noteholders, such that if normal cashflows from the Underlying Receivables fell short of obligations payable to Noteholders and Transaction Parties in any given period, such cashflows could be supplemented with funds from the reserve fund.

197. The reserve account for each of TCF Securitizations was funded and maintained at a level equal to 0.25% of the initial balance of the Underlying Receivables (*e.g.*, a \$500 million securitization, such as TCF 2016-1, featured a \$1.25 million reserve account). *See e.g.* Section II.A, *supra*, and Exhibit 1 hereto.

198. Prior to the Moody's Announcement, and as indicated by the preliminary offering documents for the TCF 2016-PT1 notes and certificates, the reserve account for TCF 2016-PT1 was structured identically to those of the prior

1 TCF Securitizations, at 0.25% of the Underlying Receivables. *See, e.g.*, December
2 1, 2016 TCF 2016-PT1 preliminary certificate private placement memorandum, at
3 7; December 8, 2016 TCF 2016-PT1 preliminary notes offering memorandum
4 supplement, at S-10.
5

6
7 199. However, in conjunction with the Moody's Announcement, and as
8 indicated by the final offering documents for the TCF 2016-PT1 notes and
9 certificates (dated December 14, 2016, the date of the Moody's Announcement), the
10 reserve account for TCF 2016-PT1 was nearly *quadrupled* – at effectively the last
11 moment – from 0.25% of the initial balance of the Underlying Receivables to 0.90%.
12
13

14 200. The dramatic upsizing of TCF 2016-PT1's reserve account, which
15 occurred between December 12 and December 14, 2016, was directly related to
16 Moody's discovery that Reported CNL had excluded Repo/Remarketing Expenses,
17 and was required by Moody's as extra credit protection for TCF 2016-PT1
18 noteholders in light of such expenses (and their prior exclusion from Reported
19 CNL).
20
21
22

23 **C. Moody's Downgraded Certain TCF 2016-1 Notes after**
24 **Calculating the Increased CNL when Repo/Remarketing**
25 **Expenses were Included**

26 201. In connection with and as part of the Moody's Announcement,
27 Moody's announced that it had re-evaluated all of the credit ratings it had previously
28 assigned to the notes issued by all Gateway-sponsored auto loan ABS, including the

1 TCF Securitizations, by including previously-excluded Repo/Remarketing
2 Expenses into its CNL calculations. *See* Moody's Announcement, at 2. Inclusion
3 of Repo/Remarketing Expenses caused Moody's CNL estimates for such
4 securitizations to rise as much as 0.75% (in absolute terms, and as much as 23% in
5 relative terms). *Id.*

6
7
8 202. As a result of its re-evaluation, Moody's downgraded certain of the
9 initial credit ratings it had provided for TCF 2016-1 Notes only two months earlier,
10 upon their initial issuance on or about September 23, 2016. *See* Moody's
11 Announcement, at 2. Specifically, Moody's downgraded its credit ratings on the
12 two junior-most classes of TCF 2016-1 Notes that it had rated: the Class B Notes
13 (downgraded from Aa3 to A1), and the Class C Notes (downgraded from A3 to
14 Baa1).¹⁴

15
16
17
18 203. As Moody's explained, the downgrades to these junior note classes,
19 which had been issued only two months earlier and did not yet have any actual
20 performance record to speak of, were driven *entirely* by Moody's recalculation of
21 CNL to include the previously-excluded Repo/Remarketing Expenses, which
22 resulted in estimated TCF 2016-1 CNL increasing by 16.7%, from 3.0% to 3.5%.
23 *See* Moody's Announcement, at 2 ("For the 2016-1 transaction, the inclusion of
24
25
26
27
28

¹⁴ Moody's had declined to rate TCF 2016-1's junior-most Class D Notes, most likely because they did not merit a triple-B (Baa) rating under Moody's credit rating methodology.

1 additional servicer expenses led to an increase in CNL to 3.50% from 3.00%. . .
 2 This drove the downgrades on Classes B and C.”).

3
 4 204. That Moody’s deemed the increased/accurate CNL sufficiently
 5 material to require downgrades for TCF 2016-1’s Class B and Class C *Notes*
 6 demonstrates all the more the materiality for TCF 2016-1’s *Certificates*. The
 7 *Certificates* were not merely junior to the Class B/C Notes, and thus affected more
 8 severely by the increased/accurate CNL, but, unlike the Notes, were wholly
 9 unprotected from Underlying Receivables’ CNL by any more junior securities and
 10 were thus exposed on a front-line, dollar for dollar basis to increased CNL.
 11

12
 13
 14 **D. Moody’s Initiated an Industry-Wide Study of Auto Loan ABS**
 15 **Sponsors’ Treatment of Repo/Remarketing Expenses and CNL**
 16 **Reporting, and Found Gateway in Violation of Industry**
 17 **Standards**

18 205. As detailed above (*see* Section III.E, *supra*), following Moody’s
 19 December 2016 discovery that Defendants had not included Repo/Remarketing
 20 Expenses in Gateway’s Reported CNL, yet still passed on Repo/Remarketing
 21 Expenses to ABS securitizations and ABS investors, Moody’s decided to study how
 22 auto ABS sponsors treated and reported Repo/Remarketing Expenses, querying all
 23 of the 28 auto ABS sponsors whose securities it regularly rated, and published its
 24 findings in the May 10, 2017 Moody’s Study.
 25

26
 27 206. The Moody’s Study initiation, as well as its findings, both demonstrate
 28 materiality.

1 207. First, Moody's decision to conduct a comprehensive study of treatment
2 of Repo/Remarketing Expenses in CNL reporting, and/or investigate whether other
3 auto loan ABS sponsors operated similarly to Defendants, demonstrates the
4 materiality of the matter.
5

6 208. Second and relatedly, as Moody's explained in the Moody's Study,
7 CNL is a fundamental and material issue for ABS investors such as Plaintiffs:
8

9
10 Cumulative Net Loss (CNL) is an important performance
11 metric to analyze auto loan asset-backed securities (ABS),
12 because it reflects the cumulative net loss borne by the
13 ABS trust on the defaulted collateral. In some cases,
14 however, the reported CNL excludes the costs of
15 repossession and remarketing of the vehicles backing
16 defaulted loans. The costs included in the reported CNL
17 vary among issuers . . . Understanding these reporting
18 differences and the costs that the trusts bear is important
19 when comparing CNL across auto loan ABS pools or
20 when projecting losses that ABS noteholders could incur.

21 Moody's Study, at 1.
22

23 209. Third, and as detailed above (*see* Section III.E, *supra*), the Moody's
24 Study documented a consistent, logical and appropriate industry standard, followed
25 by 25 of 28 auto loan ABS sponsors, in which (1) sponsors that passed on
26 Repo/Remarketing Expenses to ABS securitizations/investors reported included
27 such expenses in reported CNL, while (2) sponsors that bore such expenses
28 themselves excluded them from reported CNL. *See* Moody's Study, at 2; Section
III.E, *supra*. Only Gateway and two other auto loan ABS sponsors operated in

1 violation of this industry standard; Gateway's violations were the most extreme of
2 all, for the reasons set forth in Section III.E, *supra*, and the two other auto loan ABS
3 sponsors' violations were immaterial.
4

5 **VI. FACTS RELEVANT TO SCIENTER**

6 210. Defendants' scienter is supported by the following facts.
7

8 211. First, Gateway was at all times actually aware of the Repo/Remarketing
9 Expenses associated with Gateway-originated and Gateway-serviced auto loans. As
10 Gateway itself incurred those Repo/Remarketing Expenses, it was therefore aware
11 of them. Indeed, Gateway's actual awareness of its loans' Repo/Remarketing
12 Expenses is confirmed by the facts that:
13
14

15 a. Gateway required the ABS securitizations it sponsored to
16 reimburse Gateway for the Repo/Remarketing Expenses Gateway incurred in
17 connection with such securitizations' underlying receivables;
18
19

20 b. Gateway submitted such expenses to such securitizations on a
21 monthly basis; and
22

23 c. Gateway received monthly reimbursement for such expenses
24 from such securitizations.
25

26 212. Second, and relatedly and for the same reasons, Gateway was likewise
27 aware at all times that its Reported CNL excluded Repo/Remarketing Expenses.
28 Gateway itself designed and directed its external financial reporting to generate

1 Reported CNL that excluded Repo/Remarketing Expenses. And Gateway's above-
2 mentioned submission and receipt of reimbursement for the Repo/Remarketing
3 Expenses associated with the underlying receivables for each ABS securitization
4 that Gateway sponsored confirms Gateway's awareness that Reported CNL in fact
5 did not include Repo/Remarketing Expenses.
6
7

8 213. Third, the fact that Gateway's CNL reporting departed from industry
9 standard practice, and from the logic embodied by such standard practice, provide
10 further indication that Gateway was aware that its Reported CNL excluded
11 Repo/Remarketing Expenses.
12
13

14 214. As set forth above in Section III.E, *supra*, a clear, consistent, and
15 logical industry standard operates across the auto ABS industry to ensure that the
16 CNL reported by ABS sponsors is presented on the same basis as the CNL
17 experienced by ABS investors. Where Repo/Remarketing Expenses are passed on
18 to ABS securitizations/investors, they are included in reported CNL (19 ABS
19 sponsors); where ABS sponsors bare such expenses themselves (six ABS sponsors),
20 they are excluded in reported CNL. Either and both ways, reported CNL
21 corresponds to Experienced CNL.
22
23
24
25

26 215. As likewise set forth above in Section III.E, *supra*, Gateway is one of
27 only three ABS sponsors to violate such standard practice (and of the three, is the
28 worst violator), by causing ABS securitizations/investors to bear the Underlying

1 Receivables' Repo/Remarketing Expenses but providing them with Reported CNL
2 that excludes those expenses. Such reporting practices open a disjuncture between
3 the CNL figures reported by ABS sponsors for their loans (lower, due to exclusion
4 of Repo/Remarketing Expenses), and the CNL figures experienced by investors in
5 ABS backed by such loans (higher, due to inclusion of Repo/Remarketing
6 Expenses).

7
8
9
10 216. In the context of *scienter*, the relevant aspect of the foregoing is the
11 sheer absence of any rationale, explanation or justification for operating to create
12 such disjunctures between Reported CNL and Experienced CNL. Put simply, **there**
13 **is no reason to report CNL differently than investors experience it.** Reporting
14 in such a manner, therefore, can only be the product of knowing or reckless disregard
15 for the misleading impact of such reporting for ABS investors.

16
17
18 217. Fourth, and relatedly, the fact that Gateway's two co-founders, Brian
19 MacInnis and David MacInnis, who at all times until January 2017 also served as
20 Gateway's two top officers (CEO and President), were longtime auto loan ABS
21 industry insiders with decades of auto loan ABS experience, further indicates that
22 Gateway's practice of excluding Repo/Remarketing Expenses from Reported CNL
23 was not the product of an innocent or unknowing mistake, but was instead a
24 deliberate and knowing decision.

1 a. Brian MacInnis and David MacInnis co-founded Gateway in
2 2007 as an indirect automobile finance company operating under an originate-to-
3 sell model (*i.e.*, Gateway did not retain its loans, but sold them), and had operated
4 Gateway for nearly a decade before the events at issue herein. During that period,
5 Gateway experienced substantial growth, and sold and/or securitized billions of
6 dollars of auto loans.
7

8
9 b. Prior to founding and operating Gateway, Brian MacInnis and
10 David MacInnis were employed as executives at Onyx Acceptance Corp. (“Onyx”),
11 which also focused on indirect automobile finance, including “the purchase,
12 securitization and servicing” of auto loans.¹⁵ Brian MacInnis founded Onyx and
13 served as its CEO and Chairman; David MacInnis occupied a series of roles at Onyx
14 (Vice President, Senior Vice President, Executive Vice President) between 1994 and
15 2006. Between its founding and 2002, Onyx originated more than \$8 billion of auto
16 loans and completed 30 auto loan ABS securitizations. *See* Onyx 10-K, at 3.
17
18
19
20

21 c. Prior to their time at Onyx, Brian MacInnis and David MacInnis
22 were employed for more than a decade (since at least 1981, until approximately
23 1993) by Western Financial Savings (“WFS”), where Brian MacInnis led its auto
24 finance division (“WFS Financial”) and David MacInnis served in multiple
25
26
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28

¹⁵ *See* Onyx Form 10-K for the year ended December 31, 2002, filed with the SEC on or about March 28, 2003 (“Onyx 10-K”), at 3.

1 capacities, including direct lending manager and collections manager. Between
2 1985 and 1999, WFS Financial securitized more than \$14 billion of auto loans.
3

4 218. Through their above-detailed decades of experience in originating,
5 servicing and securitizing auto loans, Gateway's co-founders and senior-most
6 executives were deeply familiar with the auto loan ABS industry and the standards
7 operative therein, and were likewise familiar with auto loan ABS investors and the
8 standard information such investors expected and received in connection with auto
9 loan ABS securitizations. Their decision to operate Gateway in violation of such
10 standards was not an innocent one, but one made with scienter, either through actual
11 knowledge of the violation or through extreme and reckless disregard for the
12 violation.
13
14
15
16

17 219. Fifth, and relatedly, Defendants had both motive and opportunity to
18 exclude Repo/Remarketing Expenses from Reported CNL. The exclusion of
19 Repo/Remarketing Expenses from Reported CNL had the effect of materially
20 reducing, by approximately 15%-20% (*see* Section III.E.2, *supra*) the CNL levels
21 publicly reported for Gateway auto loans. The lower CNL levels that Defendants
22 were thereby able to report made Gateway loans and Gateway ABS more attractive
23 to investors, including Plaintiffs. More particularly, reporting Gateway's CNL in
24 this manner allowed Defendants to manufacture *the appearance of* a loan
25 quality/performance advantage, in comparison to other ABS sponsors who included
26
27
28

1 Repo/Remarketing Expenses in their reported CNL – an apparent superiority, as
2 detailed herein (*see* Sections IV.E, *supra*, and VII.B, *infra*), that Plaintiffs noticed
3 and inquired about, and that formed part of the reason for Plaintiffs’ decision to
4 invest in TCF Securitizations and Certificates.
5

6
7 220. Sixth, and relatedly, the January 2017 termination of Defendants’
8 employment of Brian MacInnis and David MacInnis – Gateway’s co-founders and
9 two top officers (CEO and President) – shortly after the December 2016
10 discovery/disclosure of Gateway’s CNL misreporting further supports an inference
11 of scienter.
12

13
14 221. Seventh, Gateway’s scienter is imputable to TCF Bank given their
15 overlapping personnel, including notably Gateway CEO and co-founder Brian
16 MacInnis, who also served as senior officer of TCF Bank (specifically, TCF Bank’s
17 Executive Vice President for National Consumer Lending).
18

19
20 222. Eighth, Gateway’s scienter is imputable to TCF Auto and the TCF
21 Issuing Trusts because each of the latter were empty shell entities without any
22 employees of their own, and were merely employed by Gateway to effect the TCF
23 Securitizations. TCF Auto and the TCF Issuing Trusts thus functioned effectively
24 as alter egos of Gateway, and/or at all relevant times were under Gateway’s effective
25 control.
26
27
28

VII. PLAINTIFFS' DUE DILIGENCE

A. Plaintiffs' Extensive Pre-Purchase Evaluation of the Certificates

223. As already detailed in Section III.A above, Plaintiffs utilized the Supplemental Data to conduct – as part of their due diligence – extensive and sophisticated pre-purchase analyses of the Certificates, the TCF Securitizations and the Underlying Receivables. Such analyses included:

- a. review of the Offering Documents;
- b. evaluation of
 - i. the credit characteristics of the Underlying Receivables,
 - ii. the CNL and prepayment performance of numerous prior loan pools originated by Gateway, and
 - iii. the credit characteristics of such loan pools;
- c. development, based on analysis of the foregoing, of a “base case” view of the Underlying Receivables’ prospective prepayment and CNL;
- d. projection of such “base case” cashflows through the TCF Securitizations to evaluate the TCF Securitization structure and how “base case” cashflows from the Underlying Receivables would flow to the Certificates;
- e. development, based, *inter alia*, on historical CNL and prepayment performance of numerous prior loan pools originated by Gateway (and other originators), of multiple “stress” scenarios with respect to CNL and

1 prepayments, and projection of cashflows under such “stress” scenarios through the
2 TCF Securitizations to evaluate Certificate cashflows under alternative and more
3 negative performance scenarios;
4

5 f. performing “break even” analyses to determine prospective
6 CNL levels at which Certificate returns would diminish to zero; and
7

8 g. formulation, based on the foregoing, of an offer price for the
9 Certificates that would still allow for acceptable returns in “stress” scenarios.
10

11 224. While Plaintiffs performed their own, independent analyses as
12 summarized above, Plaintiffs’ due diligence also took into consideration similar
13 analyses performed by others, including Defendants, the Initial Purchasers, and the
14 TCF Securitizations’ credit rating agencies (Moody’s and S&P).
15
16

17 **B. Plaintiffs’ Additional Due Diligence**

18 225. In addition to the above-noted due diligence, Plaintiffs conducted
19 further due diligence through direct communications with Defendants, via in-person
20 meetings as well as telephone conversations, as already detailed in Section IV.E,
21 *supra*.
22
23

24 226. For example, GIC:

25 a. visited Gateway headquarters on October 20, 2015 to meet with
26 Gateway’s senior management team, including Gateway’s co-founders Brian
27 MacInnis (Gateway’s CEO) and David MacInnis (Gateway’s President), as part of
28

1 GIC's pre-investment evaluation of Gateway, and of Gateway's loan origination,
2 servicing, underwriting, performance, and performance reporting;
3

4 b. initiated two follow-up communications by telephone in the
5 ensuing weeks, on November 5 and November 10, 2015, with Gateway CEO Brian
6 MacInnis; and
7

8 c. engaged in three further meetings during 2016 in New York City
9 with Defendants' executives – once more with Gateway's CEO, and twice with
10 Gateway senior vice president Sydney Libsack (who oversaw Gateway's purchase
11 and sale of loan portfolios in the secondary markets) – on June 6, 2016 (in
12 connection with and shortly prior to GIC's purchase of TCF 2016-DP1 Certificates),
13 August 22, 2016, and October 25, 2016.
14
15
16

17 227. As already detailed in Section IV.E, *supra*, GIC, prior to making any
18 investments in Defendants' auto loans or Defendant-sponsored ABS, such as the
19 TCF Securitizations, had:
20

21 a. examined the performance record of Gateway-originated auto
22 loans;
23

24 b. compared it the performance of other originators' auto loans;
25

26 c. observed that Gateway-originated loans' credit performance
27 (including reported CNL) appeared superior to that of other originators;
28

1 d. determined that the apparent performance differential was not
2 fully explained by differences in the loans' credit characteristics; and
3

4 e. repeatedly raised the issue of this apparent performance
5 differential in its discussions with Defendants, and repeatedly asked Defendants for
6 explanations as to its cause – in response to which Defendants refused to provide
7 any information other than the false explanation that Defendants were better than
8 their peers at credit selection and loan servicing.
9
10

11 **VIII. PLAINTIFFS' REASONABLE AND DIRECT RELIANCE**
12 **ON DEFENDANTS' REPRESENTATIONS**

13 228. Plaintiffs actually, reasonably and/or justifiably relied upon
14 Defendants' material misrepresentations and omissions by, *inter alia*: (a) reading
15 the Offering Documents; (b) reviewing the Supplemental Data; and (c) utilizing the
16 Supplemental Data, including the CNL information contained therein and reported
17 in the Offering Documents, to:
18
19

20 a. model the prospective performance of the Underlying
21 Receivables, the TCF Securitizations and the Certificates, under base case and
22 multiple stress scenarios;
23
24

25 b. evaluate the Certificates' value and risk;

26 c. decide to purchase the Certificates; and

27 d. determine the price at which to do so.
28

1 229. But for Defendants' material misrepresentations and omissions,
2 Plaintiffs would not have purchased the Certificates at the prices they did, or at all.
3

4 230. Prior to purchasing their Certificates, Plaintiffs engaged in reasonable
5 and robust due diligence, as detailed in Sections III.A and VII above, including, in
6 addition to close review of the Offering Documents and Supplemental Data,
7 repeated and direct communications with Defendants, including communications
8 concerning Gateway's reported CNL. However, Plaintiffs (and not only Plaintiffs,
9 but all other ABS investors, as well as the credit rating agencies) were entirely
10 dependent on the provision of data from Defendants with respect to the performance
11 (including, centrally, CNL) of Gateway-originated auto loans, and relied on
12 Defendants' representations and statements in the Offering Documents and the
13 Supplemental Data in performing their due diligence.
14
15
16
17

18 231. Before deciding to purchase the Certificates, Plaintiffs reviewed and
19 considered the information in Offering Documents and Supplemental Data,
20 including statistical information contained in the Offering Documents and
21 Supplemental Data concerning the Underlying Receivables specific to each TCF
22 Securitization in question, as well as information concerning the characteristics and
23 performance of Gateway's previously-originated auto loans. Plaintiffs used these
24 and other statistics concerning the Underlying Receivables and similar Gateway-
25 originated receivables to conduct rigorous quantitative analyses and modeling of the
26
27
28

1 Underlying Receivables, the TCF Securitizations and their anticipated cashflows,
2 and the anticipated performance and value of the Certificates themselves, in order
3 to assess whether or not to purchase the Certificates, and if so, at what price. In such
4 analyses, Reported CNL was a material – and, indeed, absolutely central – input.
5 Plaintiffs directly relied on and used Reported CNL data in conducting their own
6 analyses of the Underlying Receivables and the Certificates’ risk/return profiles, and
7 in analyzing whether to purchase the Certificates and, if so, at what price.
8
9
10

11 232. Plaintiffs’ analyses began with examination of the Underlying
12 Receivables’ credit characteristics, as represented in the Offering Documents and
13 Supplemental Data. Next, interpolating this data with further data concerning the
14 credit characteristics and historical performance of Gateway’s previously-originated
15 auto loan receivables (as represented in the Offering Documents and Supplemental
16 Data), Plaintiffs then ran multiple simulations of the projected performance of the
17 Underlying Receivables under different market conditions in order to:
18
19
20

21 a. model:

22 i. the Underlying Receivables’ cash flows, defaults, loss
23 severities and CNL under “base case” and multiple “stress scenarios;
24
25

26 ii. how such cash flows and losses flowed through the TCF
27 Securitizations to the Notes and Certificates; and thus
28

1 iii. the Certificates' prospective returns, under base case and
2 multiple stress scenarios;

3
4 b. determine, based on the foregoing, whether or not to invest in
5 the Certificates; and

6
7 c. determine, based on the foregoing, the price which they would
8 offer to pay for the Certificates (a price that allowed for acceptable returns even in
9 a stress scenario outcome).

10
11 233. Ultimately, however, all of Plaintiffs' due diligence was for naught.
12 Prior to their purchases of the Certificates, Plaintiffs' review and analysis of the
13 Underlying Receivables, the TCF Securitizations and the Certificates was limited to
14 the information, data and representations supplied by Defendants in the Offering
15 Documents and Supplemental Data, which contained material misrepresentations
16 and omissions. The accuracy and quality of the financial analyses, modeling and
17 stress tests that formed part of Plaintiffs' due diligence was entirely dependent on
18 the quality of the data provided by Defendants concerning the characteristics and
19 performance of Gateway-originated auto loans – data now known to be false in key
20 respects.
21

22
23 234. Defendants knew that Plaintiffs' due diligence, evaluation, valuation
24 and/or pricing of the Underlying Receivables and the Certificates were reliant on
25 the information Defendants were providing, including, principally, the CNL
26
27
28

1 performance of Gateway-originated auto loans as reported in the Offering
2 Documents and the Supplemental Data.
3

4 235. Defendants further represented, in the Offering Documents and
5 Supplemental Data, that the CNL reported therein included – *i.e.*, was “net” of –
6 Repo/Remarketing Expenses. *See* Section IV.B, *supra*.
7

8 236. Plaintiffs’ due diligence did not and could not have uncovered the truth
9 of the matters misrepresented by Defendants: here, that in contravention of industry
10 standards and Defendants’ representations, the Reported CNL in the Offering
11 Documents and Supplemental Data did not include Repo/Remarketing Expenses,
12 even though such expenses were passed through to the TCF Securitizations and
13 ultimately to their investors, such as Plaintiffs. The information necessary to make
14 such an assessment was in the peculiar, unique and special knowledge of
15 Defendants. Both prior and subsequent to Plaintiffs’ Certificate purchases, and at
16 all times until at least December 2016, the only persons aware that Gateway’s
17 Reported CNL did not include Repo/Remarketing Expenses were Gateway itself,
18 which – in contravention of industry standards – set up its external financial
19 reporting systems to exclude such Repo/Remarketing Expenses from reported CNL,
20 and Gateway’s co-Defendants. Plaintiffs did not have and could not have access to
21 such internal minutiae of Gateway’s financial reporting systems, and no amount of
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1 due diligence, reasonable or otherwise, would have provided Plaintiffs with such
2 access.

3
4 237. Indeed, as detailed in Sections IV.E and VII.B above, Plaintiffs
5 repeatedly requested additional information from Defendants concerning the
6 apparent performance differential between Gateway auto loans and those of other
7 auto loan originators, as indicated by Defendants' Reported CNL. Defendants,
8 however, refused to provide additional information beyond the false explanation that
9 the performance differential was the result of Gateway's purportedly superior credit
10 selection (in making loans) and purportedly superior aggressiveness in servicing
11 such loans.
12

13
14
15 238. Although the Gateway loan performance information contained in the
16 Offering Documents and Supplemental Data was extensive, it still nowhere
17 contained sufficiently granular detail to allow discernment of how
18 Repo/Remarketing Expenses were, or were not, flowing through to reported CNL.
19

20
21 a. For the most part, the performance information contained in the
22 Offering Documents and Supplemental Data was presented on cumulative *net* loss
23 basis, where "net" indicated losses presented net of recoveries produced through
24 auto repossession and liquidation. *See* Section IV.B, *supra*. Consequently, such
25 data, reporting a state of affairs *subsequent* to repossession and liquidation
26
27
28

1 experience, did not and could not indicate the minutiae of such repossession and
2 liquidation experience.
3

4 b. To a lesser degree, the performance information contained in the
5 Offering Documents and Supplemental Data presented gross losses, recoveries and
6 net losses (in the TCF 2015-2 and TCF 2016-1 Securitizations, on a “managed pool”
7 basis only; in the TCF 2016-DP1 Supplemental Data, also on a “static pool” basis).
8 However, even though such data reported affairs prior, during and subsequent to
9 repossession and liquidation experience, it still nowhere provided information to
10 show or allow for an understanding of how Repo/Remarketing Expenses were, or
11 were not, flowing through to reported CNL.
12
13
14

15 239. Subsequent to Plaintiffs’ Certificate purchases and at all times until
16 December 2016, US Bank’s publication and distribution of the Monthly Reports to
17 TCF Securitization investors, including to Plaintiffs, did not alter this informational
18 state of affairs or provide Plaintiffs with any information indicating that reported
19 CNL did not include Repo/Remarketing Expenses. While the Monthly Reports
20 included a line-item labelled “Additional Servicer Expenses (Reimbursables),”
21 nothing indicated either (1) that such Additional Servicer Expenses were comprised
22 of or included Repo/Remarketing Expenses, or (2) that such amounts had not been
23 included in Reported CNL.
24
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1 240. Had Defendants reported accurate CNL data in the Offering
 2 Documents and Supplemental Data (*i.e.*, CNL data that included associated
 3 Repo/Remarketing Expenses), Plaintiffs' financial analyses would have generated
 4 substantially reduced cash flows from the Underlying Receivables to the
 5 Certificates, and Plaintiffs' analyses of the Certificates' returns, value, and
 6 appropriate pricing would all have been significantly lower.
 7
 8

9
 10 **IX. PLAINTIFFS ARE ENTITLED TO A PRESUMPTION OF**
 11 **RELIANCE WITH RESPECT TO DEFENDANTS' MATERIAL**
 12 **OMISSIONS**

13 241. As set forth above, Defendants omitted to disclose – in the Offering
 14 Documents, the Supplemental Data, and their direct communications with Plaintiffs
 15 – that Reported CNL did not include Repo/Remarketing Expenses. *See* Section
 16 IV.A, *supra*.
 17

18 242. As set forth above, such omissions were material, both because
 19 Reported CNL is fundamentally material to ABS investors, including Plaintiffs, and
 20 because Reported CNL was substantially understated via exclusion of
 21 Repo/Remarketing Expenses. *See* Sections III and V, *supra*.
 22
 23

24 243. Moreover, reasonable investors, such as Plaintiffs, in auto ABS
 25 securitizations where Repo/Remarketing Expenses are passed on to ABS
 26 securitizations/investors (such as the TCF Securitizations), reasonably could, and
 27 did, expect Reported CNL to include Repo/Remarketing Expenses. *See* Section
 28

1 III.E, *supra*. Such inclusion was not only logical and appropriate, but industry
2 standard practice. *Id.*

3
4 244. Consequently, Plaintiffs are entitled to a presumption of reliance with
5 respect to their claims alleging omission to disclose the material fact that Reported
6 CNL had excluded Repo/Remarketing Expenses.
7

8 **X. LOSS CAUSATION/ECONOMIC LOSS**

9
10 245. The material misrepresentations and omissions in the Offering
11 Documents and Supplemental Data (and in Defendants' direct communications with
12 Plaintiffs) directly and proximately caused Plaintiffs' damages.
13

14 246. Plaintiffs paid a purchase price for the Certificates that was far in
15 excess of what those securities were actually worth at the time of purchase.
16 Plaintiffs paid the price they did based on the material misrepresentations and
17 omissions in the Offering Documents and Supplemental Data concerning the CNL
18 for Gateway-originated auto loans, and the misleading CNL figures reported by
19 Defendants therein. Such misrepresentations, misleading statements, and omissions
20 concerning Gateway auto loans' CNL created an unusual and illogical disjuncture
21 between (1) the CNL, as Defendants reported it, of Gateway's pooled auto loans
22 (Reported CNL), and (2) the CNL of pooled Gateway auto loans, as investors in
23 Gateway-sponsored auto loan ABS experienced them (Experienced CNL).
24 Defendants' exclusion of Repo/Remarketing Expenses from Reported CNL made
25
26
27
28

1 Reported CNL appear lower than Experienced CNL (which included such
2 expenses), and consequently, because Plaintiffs' analysis, evaluation, valuation, and
3 pricing of the Certificates all depended fundamentally on Reported CNL:
4

5 a. made the foreseeable risks and losses associated with the
6 Underlying Receivables, the TCF Securitizations and the Certificates appear lower
7 than they in fact were;
8

9 b. made the prospective cashflows and returns associated with the
10 Underlying Receivables, the TCF Securitizations and the Certificates appear higher
11 than they in fact were;
12

13 c. made the value of the Certificates appear higher than they in fact
14 were; and consequently
15

16 d. inflated the prices Plaintiffs offered and paid for the Certificates.
17

18 247. The artificial inflation in Plaintiffs' Certificate purchase prices
19 resulting from Defendants' misrepresentations concerning Reported CNL, can be
20 measured, on an *ex ante* basis, as the difference between (a) Plaintiffs' actual
21 Certificate pricing evaluations when purchasing the Certificates, based on
22 Defendants' Reported CNL, and (b) pricing evaluations identical to Plaintiffs' actual
23 evaluations in all respects except being based on Reported CNL *plus*
24 Repo/Remarketing Expenses.
25
26
27
28

1 248. Plaintiffs' damages resulting from Defendants' misrepresentations
 2 concerning Reported CNL can also be measured, on an *ex post* basis, as the sum
 3 total of Repo/Remarketing Expenses paid to Gateway from each TCF
 4 Securitization's Underlying Receivables' cashflows.
 5

6 249. These two damage measures represent different means to describe the
 7 same thing – the effect on Certificate cashflows/returns of Repo/Remarketing
 8 Expenses – and should substantially converge.
 9
 10

XI. DEFENDANTS' ACTIONS CONSTITUTE A SERVICER 12 TERMINATION EVENT

13 250. In certain circumstances, termed by the Offering Documents "Servicer
 14 Termination Events," Gateway can be terminated as the TCF Securitizations'
 15 servicer.
 16

17 251. Included among Servicer Termination Events is the event that:
 18

19 any representation or warranty of the servicer made in the
 20 servicing agreement or any other transaction document
 21 proves to be incorrect in any material respect when made,
 22 which failure materially and adversely affects the rights of
 23 the noteholders or certificateholders, and which failure
 24 continues unremedied for sixty (60) days after there shall
 25 have been given, by registered or certified mail, given (1)
 26 to the servicer by the issuing entity or the indenture trustee
 27 or (2) to the issuing entity, the indenture trustee and the
 28 servicer from the noteholders of notes evidencing not less
 than a majority of the outstanding Note Balance of the
 Controlling Class, or, if no notes are outstanding, from the
 Majority Certificateholders.

1 *See, e.g.*, TCF-2015-DP1 Certificate PPM at 106; TCF 2015-2 Notes Preliminary
2 OM at S-115; TCF 2015-2 Notes OM at S-115; TCF 2016-1 Notes Preliminary OM
3 at S-111; TCF 2016-DP1 Certificate PPM at 103; TCF 2016-1 Notes OM at S-111.

4
5 252. If the above-described Servicer Termination Event, or other Servicer
6 Termination Events, remains unremedied, Gateway may be removed as the TCF
7 Securitizations' servicer, and Gateway's servicing rights and obligations with
8 respect to the Underlying Receivables may be terminated. *See, e.g.*, TCF-2015-DP1
9 Certificate PPM at 106; TCF 2015-2 Notes Preliminary OM at S-115; TCF 2015-2
10 Notes OM at S-115; TCF 2016-1 Notes Preliminary OM at S-111; TCF 2016-DP1
11 Certificate PPM at 103; TCF 2016-1 Notes OM at S-111.

12
13
14
15 253. As set forth in Section IV, *supra*, Defendants' representations
16 concerning Reported CNL, in the TCF Securitizations' Offering Documents, were
17 materially incorrect. *See also* Sections III and V, *supra* (further indicating the
18 materiality of Defendants' misrepresentations and omissions).

19
20
21 254. As set forth in Section X, *supra*, Defendants' materially incorrect
22 representations concerning Reported CNL have had a material and adverse effect
23 on Certificateholders, including Plaintiffs.

24
25
26 255. Certificateholders, including Plaintiffs, are intended third-party
27 beneficiaries of the servicing agreements for each of the TCF Securitizations,
28

1 pursuant to which Gateway serves as the TCF Securitizations' Servicer absent
2 unremedied Servicer Termination Events.
3

4 **FIRST CLAIM FOR RELIEF**
5 **For Violations of Section 10(b) of the Exchange Act and Rule 10b-5**
6 **(Against All Defendants)**

7 256. Plaintiffs repeat and reallege each and every allegation set forth above
8 in ¶¶ 1-255 as if fully set forth herein.
9

10 257. This claim is brought pursuant to Section 10(b) of the Exchange Act
11 and Rule 10b-5 promulgated thereunder, against Defendants.
12

13 258. Defendants, by the use and means of instrumentalities of interstate
14 commerce, the mails, employed devices, schemes, and artifices, made, or
15 substantially participated in, the creation of untrue statements of material fact and/or
16 omitted to state material facts necessary to make statements made, in light of
17 the circumstances under which they were made, not misleading, and engaged in
18 acts, practices, and a course of business which operated a fraud and deceit upon
19 Plaintiffs, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b)
20 promulgated thereunder.
21

22 259. Defendants' misrepresentations, misleading statements, and omissions
23 were made with scienter, and were intended to and did, as alleged herein: (i) deceive
24 the investing public, including Plaintiffs; (ii) artificially inflate and maintain the
25
26
27
28

1 price of the Certificates (and to lesser extent, the Notes); and (iii) cause Plaintiffs to
2 purchase the Certificates at artificially inflated prices.
3

4 260. Defendants misrepresented the CNL experienced by and/or associated
5 with Gateway-originated auto loans, and made other, related misrepresentations,
6 misleading statements, and material omissions. These caused artificial inflation in
7 the pricing and/or valuations of the Certificates at, and after, the time the Certificates
8 were purchased by Plaintiffs.
9
10

11 261. Defendants were responsible for making the statements and omissions
12 alleged herein, by virtue of having prepared, approved, and/or disseminated
13 documents which contained untrue statements of material fact and/or making direct
14 statements to Plaintiffs, as detailed herein.
15
16

17 262. Defendants were privy to material non-public information concerning
18 the true composition of the CNL reported for Gateway auto loans, and that such
19 reported CNL excluded Repo/Remarketing Expenses. Defendants knew or
20 recklessly disregarded that the CNL they reported in the Offering Documents and
21 Supplemental Data excluded Repo/Remarketing Expenses, and omitted to disclose
22 such facts.
23
24

25 263. By making the material misrepresentations and omissions detailed
26 herein, Defendants knew or recklessly disregarded that they would artificially
27 inflate Plaintiffs' evaluation and modeling of the Underlying Receivables'
28

1 cashflows, and hence Plaintiffs' valuation and pricing of the Certificates (based on
2 such cashflows).

3
4 264. Defendants' material misrepresentations and omissions were made in
5 connection with the purchase or sale of the Certificates.

6
7 265. In ignorance of the materially false and misleading nature of the CNL
8 reported by Defendants, and/or Defendants' related misrepresentations, misleading
9 statements, and omissions in the Offering Documents, Supplemental Data, and
10 Defendants' direct communications with Plaintiffs, Plaintiffs purchased the
11 Certificates at artificially inflated prices. But for the fraud alleged herein, Plaintiffs
12 would not have purchased the Certificates at artificially inflated prices.
13
14

15 266. Plaintiffs were substantially damaged as a direct and proximate result
16 of their purchases of the Certificates at artificially inflated valuations and prices.
17

18 267. By virtue of the foregoing, Defendants have violated Section 10(b)
19 of the Exchange Act and Rule 10b-5 promulgated thereunder, and are liable to
20 Plaintiffs, who have been damaged as a result of such violation.
21
22

23 **SECOND CLAIM FOR RELIEF**
24 **For Common Law Fraud under California Law**
25 **(Against All Defendants)**

26 268. Plaintiffs repeat and reallege each and every allegation above as if fully
27 set forth herein.
28

1 269. Defendants made the foregoing false and/or misleading statements,
2 which were material, and/or failed to disclose or concealed information necessary
3 to make such statements not misleading, with the intent and/or foreseeability that
4 Plaintiffs would rely thereon, and upon which Plaintiffs reasonably relied to their
5 detriment.
6

7
8 270. To the extent necessary for proof of this claim, Defendants knew or but
9 for their egregious recklessness would have known that their statements and
10 omissions were false and/or misleading at the time they were made.
11

12 271. Plaintiffs actually and justifiably relied on Defendants'
13 misrepresentations and/or omissions to their detriment when Plaintiffs purchased
14 the Certificates.
15

16
17 272. Plaintiffs would not have acquired the Certificates had they known the
18 truth about the matters alleged herein, and would not have paid the prices they paid,
19 which were inflated by Defendants' misconduct.
20

21 273. As a result of Defendants' false and misleading statements and
22 omissions, Plaintiffs suffered monetary injury and punitive damages, the amount of
23 which will be proved at trial herein.
24
25
26
27
28

THIRD CLAIM FOR RELIEF
For Aiding and Abetting Common Law Fraud under California Law
(Against All Defendants)

274. Plaintiffs repeat and reallege each and every allegation above as if fully set forth herein.

275. This claim is asserted in the alternative to the Second Claim against all Defendants.

276. Each Defendant had actual knowledge of and substantially assisted in the fraudulent scheme and acts perpetrated by its fellow Defendants.

277. Each Defendant knew that the other Defendants, in the Offering Documents and Supplemental Data, and in direct communications with Plaintiffs, intentionally and materially misrepresented Reported CNL and/or omitted material facts concerning Reported CNL.

278. Each Defendant substantially assisted the other Defendants in perpetrating the fraud by concealing – in the Offering Documents, Supplemental Data and direct communications with Plaintiffs – that Reported CNL did not include Repo/Remarketing Expenses, and by making affirmative misrepresentations and/or misleading statements indicating that Reported CNL did include Repo/Remarketing Expenses.

279. Each Defendant could not have perpetrated this fraud without substantial assistance from its fellow Defendants.

1 280. As a direct and natural result of (a) Defendants' fraudulent scheme, and
 2 (b) each Defendant's aiding and abetting its fellow Defendants in that fraudulent
 3 scheme, Plaintiffs suffered substantial damages.
 4

5 **FOURTH CLAIM FOR RELIEF**
 6 **For a Declaratory Judgment under the Declaratory Judgment Act, 28 U.S.C.**
 7 **§ 2201 (Against Gateway)**

8 281. Plaintiffs repeat and reallege each and every allegation above as if fully
 9 set forth herein.
 10

11 282. Gateway serves as Servicer for each of the TCF Securitizations
 12 pursuant to servicing agreements between itself, the TCF Issuing Trusts, and US
 13 Bank (as the TCF Securitizations' indenture trustee).
 14

15 283. Certificateholders are intended third-party beneficiaries of such
 16 servicing agreements.
 17

18 284. Gateway made materially incorrect representations in the Offering
 19 Documents concerning, *inter alia*, Reported CNL.
 20

21 285. Gateway's materially incorrect representations have materially and
 22 adversely affected Certificateholders, including Plaintiffs.
 23

24 286. Consequently, Gateway's actions constitute a Servicer Termination
 25 Event which, if unremedied, allows for termination of Gateway as the TCF
 26 Securitizations' servicer.
 27

28 **WHEREFORE**, Plaintiffs pray for relief and judgment, as follows:

- 1 A. Awarding Plaintiffs compensatory damages;
- 2 B. Awarding Plaintiffs pre-judgment and post-judgment interest, as
- 3 well as reasonable attorneys' fees, expert witness fees and other costs;
- 4 C. Declaring the occurrence of a Servicer Termination Event; and
- 5 D. Awarding such other relief as this Court may deem just and proper.
- 6
- 7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs hereby demand a trial by jury on all issues so triable.

10

11 Dated: June 8, 2018

12 Respectfully submitted,

13 **KIRBY McINERNEY LLP**

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